

# **EXHIBIT F**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----

	)	
Fair Isaac Corporation,	)	File No. 16-cv-1054 (DTS)
a Delaware Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Federal Insurance Company,	)	Courtroom 14W
an Indiana corporation,	)	Minneapolis, Minnesota
and ACE American Insurance	)	Thursday, March 2, 2023
Company, a Pennsylvania	)	8:47 a.m.
Corporation,	)	
	)	
Defendants.	)	
	)	

-----

BEFORE THE HONORABLE DAVID T. SCHULTZ  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

**(JURY TRIAL PROCEEDINGS - VOLUME IX)**

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

\* \* \*

APPEARANCES:

For Plaintiff:

MERCHANT & GOULD P.C.  
BY: ALLEN W. HINDERAKER  
HEATHER J. KLIEBENSTEIN  
PAIGE S. STRADLEY  
MICHAEL A. ERBELE  
JOSEPH W. DUBIS  
GABRIELLE L. KIEFER  
150 South Fifth Street, #2200  
Minneapolis, Minnesota 55402

For Defendants:

FREDRIKSON & BYRON  
BY: TERRENCE J. FLEMING  
LEAH C. JANUS  
CHRISTOPHER D. PHAM  
RYAN C. YOUNG  
PANHIA VANG  
200 South Sixth Street, #4000  
Minneapolis, Minnesota 55402

O'MELVENY &amp; MYERS LLP

BY: LEAH GODESKY  
ANTON METLITSKY  
DARYN E. RUSH  
ROXANA GUIDERO  
Times Square Tower  
7 Times Square  
New York, New York 10036

Court Reporters:

RENEE A. ROGGE, RMR-CRR  
KRISTINE MOUSSEAU, CRR-RPR  
MARIA V. WEINBECK, RMR-FCRR  
PAULA RICHTER, RMR-CRR-CRC  
United States District Courthouse  
300 South Fourth Street, Box 1005  
Minneapolis, Minnesota 55415

\* \* \*

**I N D E X****PAGE****N. WILLIAM PAUL WAID**

Direct Examination By Mr. Hinderaker	1712
Cross Examination By Ms. Godesky	1747
Redirect Examination By Mr. Hinderaker	1828

**KEVIN HARKIN**

Direct Examination By Ms. Janus	1849
Cross-Examination By Ms. Kliebenstein	1871

**PAMELA LOPATA**

Direct Examination By Ms. Godesky	1906
Cross-Examination By Mr. Hinderaker	1917

**MICHAEL SAWYER BY DEPOSITION****PLAINTIFF'S EXHIBITS****REC'D**

404A	1892
1177	1875
1178	1875
1179	1875

**DEFENDANTS' EXHIBITS****REC'D**

12	1821
30	1800
77	1756
172	1829
276	1818
283	1817
284	1817
293	1817
330	1810
343	1819
356	1857

1 March 2, 2023

8:47 A.M.

2  
3 **(In open court without the Jury present.)**

4 THE COURT: Good morning. Please be seated.

5 All right. We're on the record outside the  
6 presence of the jury. I understand that we've got an issue  
7 with some late-added exhibits to the plaintiff's exhibit  
8 list. I've reviewed the exhibits.

9 Let me ask, first of all, if there is a -- have  
10 the parties had a chance to meet and confer and resolve the  
11 issue?

12 MR. HINDERAKER: No, we haven't, Your Honor.  
13 They came to us at like 11:30 last night.

14 THE COURT: Okay.

15 MS. GODESKY: Your Honor, Mr. Waid is in the  
16 courtroom. Is it possible for him to step out while we're  
17 talking about these documents?

18 THE COURT: Sure.

19 MS. GODESKY: Thank you.

20 MR. HINDERAKER: Could I also clarify what we're  
21 talking about a little bit from our point of view?

22 THE COURT: Sure.

23 MR. HINDERAKER: Both parties have -- you know,  
24 there is a court order about when exhibits are to be filed  
25 with the Court. And both parties have been adding to the

1 exhibit list as we go along. That's not why we're raising  
2 it with the Court today. That's not why we are raising  
3 this with the Court today. That's fine. That's how it  
4 works.

5 But Mr. Waid is sequestered. He is, you know, in  
6 the midst of his testimony. And at 11:30 last night we get  
7 more exhibits that clearly are going to be relevant to his  
8 examination, and we think the unfairness is the late  
9 notice.

10 Now, your order says if an exhibit is not on the  
11 exhibit list, it can't be used, save for good cause. And  
12 so just to be precise, it's not modifying the exhibit list  
13 in general, but it's a notice so late, when we're unable to  
14 even talk to the witness about what are these, I think  
15 that's unfair.

16 MS. GODESKY: Your Honor, may I respond?

17 THE COURT: Yeah. Let me just -- okay. Go  
18 ahead.

19 MS. GODESKY: So, Your Honor, I think what we  
20 have done is we have overdisclosed. Your Honor's order is  
21 clear that you do not need to disclose impeachment  
22 material. That's the only reason this will be used. Quite  
23 frankly, I think I could have used it without disclosing it  
24 last night, but out of an abundance of caution we put a  
25 defendants' stamp on it. And I'm only going to use it if

1 it's necessary for impeachment.

2 THE COURT: Understood. You don't have to  
3 disclose impeachment material. With that caveat, you can  
4 use it for impeachment. It won't be introduced into  
5 evidence, but you can use it for impeachment, okay?

6 MS. GODESKY: That's fine, Your Honor.

7 THE COURT: If appropriate, obviously.

8 MS. GODESKY: Sure.

9 THE COURT: Anything else we need to take up?

10 MS. GODESKY: Not from us.

11 MR. HINDERAKER: No, Your Honor.

12 THE COURT: Do we know if they're ready?

13 MS. KLIEBENSTEIN: Hold on. Yes, Your Honor.

14 We have, we have two issues, one minor one, a  
15 little bit more major.

16 So the more major one, we will be filing a short  
17 two-page letter brief regarding Mr. Bakewell, their damages  
18 expert. He was disclosed to go on the stand tomorrow. I  
19 had imagined he was going to go on next week and was going  
20 to give the Court time to look at this.

21 Mr. Bakewell -- the damages period here is 2016  
22 to 2020. His last supplementation on cost numbers was  
23 2018. So he has never, not to my knowledge -- and if I  
24 missed a supplemental report, I stand corrected, but even  
25 though he has had notice of the new numbers from

1 Interrogatory Number 17 for three, going on four years,  
2 there is no new cost data for 2019 and 2020. And so we are  
3 going to move to exclude any deduction of costs from 2019  
4 and 2020.

5 The other issue that we have, we have a  
6 demonstrative that's going to come in with Mr. Harkin, and  
7 we have an issue with two of the pages. Mr. Harkin is a  
8 CFO. Several of the pages relate to annual revenues,  
9 things like that. That's fine. But we also see that  
10 circle diagram again, and we're also seeing the pillars  
11 again. And a demonstrative, Your Honor, is supposed to be  
12 prepared by the witness for their testimony.

13 And I think given that we have seen these in the  
14 opening and we have seen them with one witness at least,  
15 they're going to keep coming in just to repetitively  
16 ingrain these ideas with the jury from the opening, but  
17 that's not what a demonstrative is for. And it's clear  
18 that given he is the CFO, that circle diagram isn't within  
19 the scope. You know what I mean?

20 THE COURT: I am very aware of which diagram --

21 MS. KLIEBENSTEIN: Yes. So that one --

22 COURT REPORTER: Excuse me. One at a time.

23 MS. KLIEBENSTEIN: I apologize.

24 So those are the two issues we have with the  
25 Harkin demonstrative, and I think one of them might come up



1 again with Ms. Lopata, but I'll let Mr. Hinderaker deal  
2 with that.

3 THE COURT: Okay. As to -- first of all, on the  
4 Bakewell issues, thank you for raising that now.

5 As to Harkin, I don't know that the demonstrative  
6 has to be prepared by the witness. I'm not sure that  
7 it's -- it has been used already. I'm not sure it's unfair  
8 to continue using it, but let's revisit that maybe briefly  
9 over the lunch hour, and you can give me a little bit more  
10 on that question.

11 MS. KLIEBENSTEIN: Okay.

12 THE COURT: Okay?

13 MS. KLIEBENSTEIN: Thank you.

14 THE COURT: Are you all ready to proceed?

15 MS. GODESKY: Yes, Your Honor.

16 THE COURT: For heaven's sake, seven minutes  
17 early?

18 MS. GODESKY: Yes.

19 THE COURT: Okay.

20 (Short break)

21 THE COURT: I think we're waiting on a couple of  
22 jurors.

23 You can sit down, Mr. Waid.

24 They cannot go over today past 5:00. They're  
25 willing to do 30-minute lunch again. Do we want to do 30

1 minutes? But they would like to know in advance. Are we  
2 willing to do that?

3 MS. GODESKY: I think generally, Your Honor,  
4 unless we're going to have like 15 minutes of argument  
5 about the demonstratives, that might get a little tight.

6 THE COURT: Fair point.

7 MS. GODESKY: Maybe 45 minutes.

8 THE COURT: Yeah. Okay. We'll figure it out.  
9 Tell them 30 to 45 minutes for now. Go ahead.

10 THE CLERK: Okay.

11 THE COURT: And we will be back here at, straight  
12 up 9:00. We will be ready to go.

13 **(Recess taken.)**

14  
15 THE CLERK: All rise for the jury.

16 **(Jury enters.)**

17  
18 **(In open court with the Jury present.)**

19 THE COURT: Be seated. Mr. Hinderaker, you may  
20 proceed.

21 MR. HINDERAKER: Thank you.

22 **(N. WILLIAM PAUL WAID)**

23 **DIRECT EXAMINATION**

24 BY MR. HINDERAKER:

25 Q. Good morning.

1 A. Good morning.

2 Q. We finished yesterday having walked through the pricing  
3 guideline, and now I would like to start with the next  
4 component of pricing. And if you would go to the Exhibit  
5 0616, please?

6 And, Mr. Mayleben, would you go to slide 2,  
7 please.

8 Do you have it there?

9 A. It's a blank page.

10 Q. Well, that's not so helpful. Here is the rest of it.

11 A. Thank you.

12 Q. This exhibit -- it's also same the document as 1090,  
13 for the record for what it's worth, but this exhibit  
14 slide --

15 Not that slide, please. Slide 3.

16 This exhibit is now on the screen. And the  
17 document that you have in front of you is, what, three  
18 pages, correct?

19 A. Correct.

20 Q. Yeah. So the purpose of having this up on the screen  
21 is to go through each of the pages and ask you to explain  
22 them.

23 But before we go to the pages, if you would put,  
24 give us the context of how this document, sizing matrix and  
25 the other two pages, relate to what we were speaking about

1 yesterday in FICO's standard methodology to derive a fee.

2 MS. GODESKY: Mr. Hinderaker, I'm sorry to  
3 interrupt, but I don't have a copy of this, either. I just  
4 have the blank page.

5 MR. HINDERAKER: Well, that's not good.

6 THE COURT: If it helps, if it helps, we can  
7 switch to the document camera.

8 MR. HINDERAKER: 1090.

9 MS. GODESKY: Okay.

10 THE COURT: Got it?

11 MR. HINDERAKER: 1090 is a better copy.

12 THE COURT: Okay.

13 BY MR. HINDERAKER:

14 Q. Yes. So maybe we'll get started yet.

15 Explain for us, if you will, how this document  
16 relates to the guidelines that we went through yesterday.

17 A. So we talked about application-based pricing. In order  
18 to come up with a standard way of actually having our sales  
19 force and our clients understand how we size applications  
20 so that they understand what's a small, what's a medium,  
21 and what's a large, soon after 2003 when the sales force  
22 started growing for this product, we created this chart.  
23 And this chart actually shows a billion logics and  
24 progressions in order for anybody to size what an  
25 application is, small, medium or large.

1 Q. All right. And now the page that's on the screen,  
2 application sizing matrix, if you would describe how to  
3 interpret this and how to use it?

4 A. Sure. Let's, let's just start with an overview of how  
5 to read this first, and then we can double click into some  
6 specifics.

7 You will see across the top where it says, small,  
8 medium, large and very large. That corresponds to the  
9 application size. Again, the intent here is just to figure  
10 out whether or not if an application is small, medium,  
11 large or very large.

12 If you look along the left side of the document  
13 from top to bottom, there is [REDACTED] that actually go  
14 into determining if it's small, medium, large or very  
15 large. You must meet the minimum criteria in each column.  
16 Essentially what that's saying there, that first line, is  
17 that if, if all the criteria does not fit in a medium, you  
18 cannot be a medium. If some of the criteria spills over  
19 into a large, you must be a large. If it spills over into  
20 a very large, you must be a very large.

21 The first criteria across the top is what we're  
22 referring to as [REDACTED]. And you will see the very first  
23 segment of [REDACTED] here under small is [REDACTED]  
24 [REDACTED]. That's the  
25 first characteristic.

1 The second characteristic is the [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 After that, it says "and." So they're connected,  
6 meaning they both must be true. You have [REDACTED]

7 [REDACTED] that the rules are actually applied  
8 to. So if you have [REDACTED], then you're a small.  
9 If you have [REDACTED], then you need to move to a medium.

10 After that it says, "and/or." The reason it says  
11 "and/or" is because if we have batch, the following  
12 conditions must also be true. If you don't have batch,  
13 then you're just fine with the real-time decisions. If you  
14 don't have real time, but you only have batch, then that's  
15 just the batch conditions that apply. That's why it says  
16 "and/or."

17 If you go down to the batch, it talks about the  
18 batch in several dimensions. The first dimension is the

19 [REDACTED]

20 [REDACTED]

21 Just to reiterate what was discussed earlier, but  
22 the difference between real-time and batch is if I'm  
23 waiting to do something, like I'm online shopping, that's  
24 real-time. You're doing that at that point in time. An  
25 example of batch would be, you fill out your grocery

1 deliveries and you ship it off. Somebody picks that up on  
2 the other side and takes care of it. It doesn't happen at  
3 the time that you click the button and all of a sudden your  
4 groceries are knocking on the door. That's the difference  
5 between real-time and batch.

6 So in the batch case, it's [REDACTED]

7 [REDACTED]  
8 [REDACTED] Why is that relevant? It's  
9 relevant because if I have 10 million records that I need  
10 to process and I take all day to do that, I need lots  
11 compute resource. If I have to process those 10 million  
12 records in 15 minutes and get it done, I need a lot of  
13 compute. And that's sort of a measure of the use of the  
14 software during that period of time.

15 The next criteria below that is [REDACTED]

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 Underneath that is actually if it's known, right,

21 [REDACTED] Very frequently that's not  
22 known, but it's another measure of sizing relative to the  
23 application size. You will see [REDACTED]

24 [REDACTED] necessary for Blaze to  
25 do its work. Same concept as the batch. A lot of records

1 in a short period of time, there is a lot of work to be  
2 done in a short period of time.

3 Am I going too fast?

4 Q. Well, thank you for --

5 A. I just realized that. I'm sorry.

6 The last one here is [REDACTED]

7 You might have heard that our RMA for business users is --  
8 it's not limited. So you have to, you have to pay for the  
9 development seat, but you don't have to pay for the RMA or  
10 the business user interfaces. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] That's eight. You might  
15 ask, Where is the ninth? It's the bottom row down here  
16 where there is [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] These particular types of hardware  
24 are very high-end, expensive. They process very quickly  
25 and, therefore, to measure the value you're getting out of



1 the software.

2 Q. Okay. Thank you.

3 Now let's go to the next page of this  
4 Exhibit 1090. Now we have -- well, as we all see, there is  
5 some dollars under the small, medium, large and very large  
6 categories.

7 Would you explain how this applies to the  
8 standard FICO methodology?

9 A. Yeah. The 2003 pricing that you saw is reflective of  
10 what's here with one exception. The large size pricing at  
11 the time of this publication increased from [REDACTED] We  
12 discovered early on that we could get more value out of a  
13 large for the use of Blaze Advisor, so we did increase that  
14 price at the time of this publication.

15 What happens after this at this period of time,  
16 we, we have a quoting process that we follow. We  
17 actually -- in order to explain this pricing, we created a  
18 fancy spreadsheet within Excel that takes all these very  
19 complicated number of things and puts them in line items so  
20 that you can see exactly how the pricing comes out. And  
21 it's transparent. It shows you all of the pricing, but you  
22 just check which one you want and it fills in the total on  
23 the left side.

24 This pricing sheet, the sizing grid, and this  
25 pricing grid that you see here, this actually gets attached

1 to the back of that spreadsheet activity for salespeople.  
2 It does not go to the client, but it is part of the  
3 workbook that the salespeople use, and this actually  
4 reflects the pricing. So you will see here that there is  
5 small, medium, large and very large, and you will see that  
6 reflective in the perpetual pricing license of [REDACTED]  
7 Underneath that you will see the high performance, which is  
8 the compiled sequential option. If you end up buying that,  
9 there is an incremental fee for that.

10 And then underneath that, if you remember from  
11 yesterday, there is the development seat costs, and they  
12 are in those packs of [REDACTED]

13 Q. Why do you price the development seats in these pack  
14 levels?

15 A. It's -- if you, if you look at the unit price that was  
16 in 2003, it was [REDACTED] per seat. So if you take [REDACTED] seats  
17 times [REDACTED], it's [REDACTED]. We're offering here for [REDACTED]  
18 If you take [REDACTED] times [REDACTED], it's [REDACTED] We're offering it  
19 for [REDACTED]. We're just giving it a little incentive for the  
20 client to buy a little bit more when they're buying.

21 So if they're on the edge and they need, you  
22 know, [REDACTED] seats, maybe they will just say, ah, I want to  
23 go to [REDACTED] It's not that big of a jump to go from [REDACTED] to  
24 [REDACTED] if they think they're going to need them. That's the  
25 purpose of it.

1 Q. Okay. And this -- just to make clarification, at least  
2 for me -- the small, medium, large and very large pricing  
3 that's on this document and this page, is that also the  
4 standard pricing as of today -- or as of 2016?

5 A. We have not changed it. It still is the standard  
6 pricing. There were several proposals to change it. We  
7 decided not to. It is still the pricing today.

8 Q. Then with respect to -- at the bottom it says,  
9 "Deployment license annual maintenance and support." It's  
10 calculated at [REDACTED] of net license amount annually.

11 I guess I have two questions. One is to explain  
12 how that's priced against the license fee -- it might be  
13 self-explanatory, but if you could detail that out -- and  
14 then whether [REDACTED] is the percentage that was used in  
15 2016.

16 A. Yeah. So, first of all, the calculation -- let's just  
17 say that we priced a small application. That's what the  
18 client was going to buy. There was no discount. So  
19 they're paying [REDACTED] for it.

20 The maintenance is calculated on top of that fee  
21 as [REDACTED] of that fee. So [REDACTED] times [REDACTED]  
22 would be roughly [REDACTED]. [REDACTED] paid annually would be  
23 that maintenance and support. That maintenance and support  
24 is what gives our clients the ability to download new  
25 versions and call us or e-mail us for help, and it's paid

1 annually. The [REDACTED] this document was created  
2 shortly after 2003. [REDACTED] was changed in February of  
3 2015 to be [REDACTED] across all FICO products, and it  
4 became mandatory.

5 Q. The licensing of maintenance and support became  
6 mandatory?

7 A. Yes.

8 Q. Okay.

9 A. The support became mandatory, yes.

10 Q. And then the fee was standardized across all products  
11 at [REDACTED]

12 A. [REDACTED]

13 Q. Let's go to -- let's go to this page of the  
14 Exhibit 1090. Sizing definitions. If you would go through  
15 this with us, please.

16 A. Yeah. This is referring back to the words that were  
17 used on that sizing grid. In order to avoid ambiguity or  
18 uncertainty about how to read that sizing grid, we provided  
19 definitions of terms. These terms are actually used in  
20 that sizing grid, so you need to understand what they mean  
21 in order to use the grid. So, for example, [REDACTED], it's  
22 the generalized extent of [REDACTED]

23 [REDACTED]  
24 [REDACTED], sort of --

25 If the application is going to be used over here

1 in a [REDACTED], say, [REDACTED]  
2 [REDACTED] that actually brings the scope of use [REDACTED] If  
3 that particular application is used to cross just [REDACTED]  
4 [REDACTED], say, D&O insurance, then it gets a little bit  
5 broader. Right? If it's used [REDACTED]  
6 [REDACTED], like a [REDACTED], then it gets broader.  
7 Eventually if you have applications used across [REDACTED]  
8 [REDACTED] meaning it's used for purposes of [REDACTED]  
9 [REDACTED] then it would be an  
10 [REDACTED] That's the definition there.

11 The rest of these terms really refer back to sort  
12 of like rule transaction, we mentioned that, any indication  
13 of the Blaze Advisor rules server, independent of the  
14 number of rules. Okay?

15 Number of [REDACTED]. The total  
16 number of [REDACTED] that will have access to  
17 the application, which is -- which invokes Blaze Advisor  
18 rules server. So it's not about who is using Blaze  
19 Advisor; it's about who is using the application in which  
20 Blaze is embedded. These are sort of the definitions of  
21 the terms that are used in the sizing grid.

22 Q. Thank you. And now with the sizing, I would like to  
23 turn to what's in evidence as Exhibit 517. We can go --  
24 oops. Okay?

25 A. Don't make this easy. Okay.

1 Q. All right. The screen is on, too.

2 So we saw this with Mr. Ghislanzoni's testimony,  
3 and it has information regarding the use of Blaze Advisor.

4 Is this, is this kind of information relevant to  
5 you as you -- using your standard methodology for pricing  
6 of Blaze Advisor?

7 A. Yes. It includes several useful pieces of information.

8 Q. Okay.

9 A. It specifically highlights here the [REDACTED] in the  
10 first column. And as you move across, it's [REDACTED]

11 [REDACTED]

12 [REDACTED] These are the parameters that are in the sizing  
13 grid.

14 Q. I would like to -- what I'm going to ask you now to do  
15 is -- we will use the slides, but ask you now to do is to  
16 take that pricing matrix, apply it to the information  
17 regarding Blaze Advisor's use at the defendants, in terms  
18 of going through this pricing analysis. So explain,  
19 explain how that, explain, explain the process, the  
20 methodology for pricing, and we will just go through the  
21 information on the slide.

22 A. Well, what we would do is, we would actually pull off  
23 the information from this spreadsheet for each of the  
24 individual applications identified. I think what is  
25 indicated here is the applications that we would target to

pull off --

Q. Okay.

A. -- listed from CSI Express, DecisionPoint, Automated Renewal Process, CUW, IRMA, TAPS, Premium Booking, Evolution, Adapt/ABL and EZER.

We would also look at the individual countries that are on here. You will see that most of them are U. S. There is one that is U. S. and Canada. There is one that is Europe and Australia and then Canada and just Europe. That's where we would start.

Q. Let's go to this step.

A. There is two reasons to pull this information off here, [REDACTED]. First of all, [REDACTED] is one of the sizing parameters in the sizing grid, as we saw.

The other reason for pulling [REDACTED] is -- and that comes back to the development seats. So they are priced separately from the small, medium, large, so we will need to know how many developing seats will be needed here in order to perform a pricing exercise.

You will see that there is [REDACTED] for CSI Express. It's a little unclear here. There is [REDACTED] for DecisionPoint. There appears to be four separate sort of uses of DecisionPoint here broken down. We will just assume that it's [REDACTED] because we don't really have clarity

1 around that. Automated Renewal Process, here again, we'll  
2 assume it's [REDACTED] CUW, [REDACTED] and so on.

3 Q. And the next column over, how does that apply to the  
4 methodology?

5 A. This is also in the sizing grid, if you recall. The  
6 [REDACTED] is a parameter that actually determines the  
7 size of the application.

8 Q. Okay. Let's go to the second page of 517.

9 A. So you will see at the top here it says real-time.  
10 And, remember, there is a real-time and batch and real-time  
11 or batch, one of the two.

12 In this particular case, we're, we're getting a

13 [REDACTED]

14 [REDACTED] We're going to have to do a little math here  
15 because the rule sizing grid says [REDACTED]. So we're going  
16 to have to take this number and do some math to get to the

17 [REDACTED]

18 Generally speaking, when we get numbers [REDACTED]  
19 [REDACTED] because this is -- they operate 7 by 24, but the  
20 majority of their -- in sort of these worlds in banking and  
21 insurance, they operate on [REDACTED] So we generally

22 [REDACTED] as the basis to take this number of [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 And you will see here that, if you link back,



1 you'll see that DecisionPoint has a [REDACTED]

2 [REDACTED] and so does CUW.

3 Q. This column, how does that relate?

4 A. So this is where the batch comes in. You'll see that  
5 this is [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q. Okay. So those are the columns that we've looked at in  
10 terms of 517 as relates to your methodology per pricing  
11 with the matrix and the sizing.

12 So next go focus in on -- I think you've talked  
13 about each of these now.

14 A. Yes.

15 Q. So let's apply them, and we'll start off with CSI  
16 Express. I think I'm going to ask you to go through the  
17 methodology in detail with CSI Express, and then we'll go  
18 through the rest of them without every -- touching base on  
19 every step.

20 Here we have CSI Express against your sizing  
21 matrix. And why does -- well, explain, explain that  
22 decision.

23 A. Yes. CSI Express is actually for the specialty lines  
24 of business, so there is multiple lines of business in  
25 that, but it is in the division of the specialty line. So

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] that's

a large.

[REDACTED]

A. So you will see that the [REDACTED]

rules. And if you go to the large, you're capped at [REDACTED]

[REDACTED] Since it's more, you have to move to the next

category, which becomes [REDACTED]. That actually puts it

into a very large at this point in time.

Q. [REDACTED]

A. So, as I mentioned, you need to do a little math here.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] So a relatively small use in batch

world.

Q. So overall in the pricing matrix, what's the size that

1       you price CSI Express at?

2       A.   Well, it would be sized at a very large.

3       Q.   And we would go back to the earlier sizing sheet that  
4       we saw where it puts the price at each of the levels.

5       A.   Yes.   When you take this very large, you can then go to  
6       that pricing sheet and figure out what that standard price  
7       would be.

8       Q.   Have you done this analysis, then, on each of the, on  
9       each of the applications?

10      A.   Yes, that analysis was done across all the information  
11      that we had available.

12      Q.   So this is Automated Renewal Processing.   Just to  
13      confirm, the process that you used, the steps that you  
14      took, were like what you've just described for CSI Express?

15      A.   For each and every one of them, reading the parameters  
16      at the top, finding the locations, circling which one it  
17      actually fits to, and then whatever the largest one is,  
18      that becomes the size.   In this case, Automated Renewal  
19      Process is a large.

20      Q.   Okay.   With respect to DecisionPoint, using the matrix,  
21      the decision was --

22      A.   Very large.

23      Q.   The next application we have here, Profitability  
24      Indicator.   And what did the pricing matrix say with  
25      respect to that?

N. WILLIAM PAUL WALD - DIRECT (Continued)

1 A. It's a very large.

2 Q. CUW?

3 A. Again, very large.

4 Q. Premium Booking?

5 A. Very large.

6 Q. TAPS?

7 A. This would be a small.

8 Q. Applying the same criteria?

9 A. Yes.

10 Q. IRMA?

11 A. This would be a large.

12 Q. CIS Claims linked to CSI Express?

13 A. This would be a very large.

14 Q. DecisionPoint -- we did DecisionPoint. This is  
15 Cornerstone. Similar?

16 A. It is similar to what is inside of DecisionPoint. We  
17 are a little uncertain from the information we have here,  
18 so we took the more conservative route of actually just  
19 calling it a medium, because we didn't have enough  
20 information to really justify that it's a large or a very  
21 large, but what we did know about it, we knew it was at  
22 least a medium.

23 Q. Evolution.

24 A. This is a very large.

25 Q. This is the Canadian Evolution. Broker Site, also in

1 Canada.

2 A. Yes. This was linked to Evolution and, therefore, a  
3 very large.

4 Q. Let's go to Adapt-ABL.

5 A. That came out to a large.

6 Q. Now Evolution in Australia?

7 A. And that came out to a small. The reason we went with  
8 a small is because it was a pilot application. It never  
9 went into full production use.

10 Q. EZER?

11 A. That's a large.

12 Q. And then Exari that was linked to EZER?

13 A. That came out to a large.

14 Q. So we've sized these applications. Now standard  
15 application pricing for FICO, you would apply those dollar  
16 amounts to each of the applications. Small would be at  
17 that level, medium, large and very large, as you've  
18 explained.

19 Would you explain the difference, please, between  
20 the numbers that you have for perpetual license and the  
21 numbers that you have for annual?

22 A. So our pricing practices and policies around annual, if  
23 you recall from yesterday where you actually have a period  
24 of time that you're licensing the software, is to take the  
25 perpetual license and calculate the annual fee from the

1 perpetual license. So we always start with the perpetual  
2 license fee. The conversion of that perpetual license to  
3 an annual license is a multiplier of [REDACTED]

4 So you take a small at [REDACTED] perpetual. You  
5 multiply that by [REDACTED] and you come up with [REDACTED] per  
6 year. If you take the medium and you multiply that by [REDACTED]  
7 you come up with [REDACTED] per year. The large, it's [REDACTED]  
8 times [REDACTED] you end up at [REDACTED] The very large at [REDACTED]  
9 [REDACTED] times [REDACTED], and you end up with [REDACTED] per year.  
10 Those are the license fees annually.

11 Maintenance is on top of that, which is [REDACTED]  
12 [REDACTED] So for a small, your maintenance is [REDACTED] For  
13 a medium, it's [REDACTED] For a large, it's [REDACTED] For a  
14 very large, it's [REDACTED]

15 You add that annual license fee and the annual  
16 maintenance fee, and you end up with the annual fee that  
17 you pay for a small, medium and large. The small is  
18 [REDACTED] The medium is [REDACTED]. The large is [REDACTED] -- I'm  
19 sorry -- [REDACTED]. And the very large is [REDACTED] per year.

20 Q. And now that was with respect to deployment license?

21 A. That is the deployment fees, yes.

22 Q. Okay. Separate from that, do you charge for the  
23 development?

24 A. Correct. That would be the lower chart.

25 Q. And if you would go through that, please.

1 A. So rather than take you through the individual math as  
2 I did before, if we look across the [REDACTED]  
3 [REDACTED] the annual fee for the [REDACTED] calculates to  
4 [REDACTED] per year. The [REDACTED] calculates to [REDACTED] per  
5 year. The [REDACTED] calculates to [REDACTED] per year, and the  
6 [REDACTED] calculates to [REDACTED] per year.

7 Q. And the conversion between perpetual and annual in this  
8 instance is, as well, is the [REDACTED]?

9 A. Yes. It's the same process. Perpetual license times  
10 [REDACTED] Then on top of that license fee, you add [REDACTED]  
11 maintenance.

12 Q. Well let's, let's see what that looks like. We're just  
13 going to assume a portfolio of applications like what we  
14 just described and look at what that, what that would be  
15 standard methodology on an annual fee basis.

16 And does this represent the result of that?

17 A. So, yeah, there is a number of applications listed I  
18 see here on the left, which represents the application size  
19 to very large all the way down to small. The annual  
20 deployment fee would be coming off of that previous chart  
21 we just looked at. If it's a large, small, medium, that  
22 would be where you pull that number from. The multi  
23 platform is not something we've discussed yet.

24 Q. That's true.

25 A. So you might remember that in the pricing grid, there

1 is this concept of Java and .NET. It's possible to have  
2 two or three different platforms. So the way our pricing  
3 works is you take the deployment fee that you would look up  
4 as our standard pricing, and you take [REDACTED] of that if  
5 you have a second platform. So if you have Java and .NET,  
6 you take the original fee. [REDACTED] of that, that's the  
7 second platform.

8 So as represented here is two multi platforms,  
9 where the fee for the second platform is [REDACTED] of the  
10 deployment fee. And then you see a various number sets of  
11 development seats, and those development seats are pulled  
12 from the packs that you saw on the previous chart. And  
13 then you just simply do the math and add them up, and you  
14 come up with an annual fee for these various configurations  
15 of large, very large, medium, small and the associated  
16 development seats.

17 In this particular case, you can see those annual  
18 fees listed in the far right column.

19 Q. So the math on this one, \$8,690,673 per year?

20 A. Yes, that would be the total per year.

21 Q. Does FICO as a standard matter license, on a fixed  
22 term, license for less than a year?

23 A. No, we do not license for less than a year. We license  
24 for [REDACTED] years. The most common  
25 is [REDACTED] years.



1 Q. And with the, with the multi-year annual -- with the  
2 multi-year term license, does FICO protect itself at all  
3 with respect to inflation?

4 A. We do. We generally apply CPI in our contracts. So  
5 we -- as you've seen since 2003, we haven't really changed  
6 our pricing from that application size, barring that one  
7 large from [REDACTED] That was the only change. But, you  
8 know, things do get more expensive, as we found out very  
9 recently in our economy.

10 CPI is an index that's commonly known, consumer  
11 price index, and it's used to allow us to go back every  
12 year and increase our prices for variable things like, for  
13 example, annual fees or maintenance and service.

14 Q. Was that -- was any consideration given to that in  
15 putting together this example of pricing?

16 A. No, because I'm actually not talking about a contract  
17 here. I'm talking about our standard pricing. This is  
18 just our standard pricing. So this is for these individual  
19 configurations, for these number of development seats, this  
20 is what those annual fees would be.

21 I haven't actually put them into a term yet. I  
22 don't know if it's one year, two year, three year or five  
23 year. But eventually if they end up in a contract, they  
24 would have a term underneath it that says that it's subject  
25 to CPI or consumer price index increases.

1 Q. Let's look at the next slide that assumes some varying  
2 terms, varying years, number of years of fixed term.

3 I take it, as this slide, we start with the  
4 annual fees that we just looked at. You've displayed an  
5 array of years on this slide?

6 A. Yes. It would be helpful if I could just see the  
7 previous slide briefly.

8 Q. Sure.

9 A. Okay. Thank you.

10 Yes, it appears these annual fees are carried  
11 forward from the previous calculation. So these would be  
12 the fees that would come out from our standard pricing on a  
13 yearly basis, an annual basis. And this exhibit is  
14 demonstrating various years from, anywhere from one year or  
15 two, four, five, seven and ten years.

16 Essentially for standard pricing you would just  
17 simply, you know, take the annual fee times the years and  
18 get to your projected total amount of fee that you would  
19 pay over that period of time. Of course, there is no CPI  
20 applied to this. This is just straight math to the years  
21 and the annual price.

22 Q. So with this, these assumptions, this array of  
23 possibilities, the math simply is standard annual fee for  
24 the fixed terms that we're assuming here, 49,714,705?

25 A. For these fixed years, yes, that's correct.

1 Q. Now, all of this pricing that we have been talking  
2 about from your methodology is annual fees on an  
3 application basis.

4 A. Correct.

5 Q. Now, FICO does also have a methodology that we saw  
6 yesterday in terms of pricing on a fixed term basis, but  
7 building from enterprise pricing parameters. Have I said  
8 that correctly?

9 A. I'm not sure I understand the question.

10 Q. I haven't said it so well.

11 As a standard matter, when presented with a  
12 contract with a fixed term, does FICO approach the pricing  
13 of that contract on an application annual basis, as we  
14 discussed? Will FICO approach that process assuming an  
15 enterprise construct?

16 A. I have never seen us approach an annual on an  
17 enterprise license.

18 Q. Is there a business reason for that? Why?

19 A. It's more around sort of the history of where our  
20 licensing has evolved to. Early on in the life of Blaze  
21 Advisor, we sold a lot of perpetual licenses. That's what  
22 the market demanded. We were interested in getting the  
23 revenues that the larger amounts that came with perpetual  
24 licenses upfront. As time went on, we became less  
25 interested in that and the market became less interested in

1 buying that way, so it shifted to term-based licensing.

2 We still have perpetual licensing. We still have  
3 annual or term-based licensing, but most of our licensing  
4 today is annual. In 2016 it was a mixed bag, and most of  
5 it was still perpetual moving to term, but it was moving  
6 and it was moving aggressively, but we have never actually  
7 taken an enterprise license and actually made that annual.  
8 At least to my recollection, unless I'm missing something,  
9 I don't think it's ever been done.

10 Q. Okay. Well, with that background, I nevertheless would  
11 just like to go through the exercise --

12 A. Okay.

13 Q. -- a hypothetical, just assuming you would change --

14 A. If we did it, you want to talk about the process.

15 Q. Yeah, I want to talk about the process.

16 So let's go to this slide.

17 Standard Blaze Advisor annual ELA pricing. And  
18 annual because we're dealing with a fixed term. ELA  
19 pricing means Enterprise License Agreement, correct?

20 A. That's what it stands for, Enterprise Licensing  
21 Agreement, yes.

22 Q. So let's start, and just showing the exercise, this  
23 slide is assuming a 35-billion-dollar enterprise. With  
24 that assumption in place, would you explain this process  
25 for us?

1 A. Okay. So assuming it's a 35-billion-dollar  
2 organization and it's for the entire organization, all 35  
3 billion, not for a piece of it, but the whole thing, the  
4 license fees are broken down into the deployment perpetual  
5 fee, the multi platform that we discussed earlier, if you  
6 have multiple platforms, perpetual fee and then the  
7 development license perpetual fee.

8 So for 35 billion -- I'm not going to pull up my  
9 price sheet, I can, but I'm not going to pull it up -- we  
10 would go to the price grid that you saw and look for 35  
11 billion and extrapolate that off of that. It comes out to  
12 about [REDACTED] dollars for that perpetual license. We  
13 would take [REDACTED] of that to get to the multi platform.  
14 That would be [REDACTED].

15 The deployment license fees are actually a little  
16 more complicated because we have four separate countries  
17 here. That means that you would need to get unlimited  
18 development seats for each of the four countries. So  
19 that's, starting at a minimum of [REDACTED] per country, times  
20 the four countries, is [REDACTED] for that fee.

21 But you also have two of them that are multi  
22 platform. Typically, we would uplift that if it's  
23 unlimited. If it's not unlimited, we require you to buy  
24 both. If we have three .NET and three Java, you got to buy  
25 three and three, six total. On the unlimited case, we

1 would actually just take [REDACTED] of that fee and uplift  
2 for that use, in this case two. That would come out to  
3 [REDACTED]. So your perpetual fees would be \$10,740,000.  
4 That's the standard price.

5 Q. Can you translate that into an annual?

6 A. Yes. So to get that into an annual, cut myself, [REDACTED]  
7 times that 10,740,000. Your license fee would be  
8 [REDACTED] [REDACTED] of that license fee annually would  
9 be [REDACTED]. Combine them together, your annual fee for  
10 this enterprise license would be \$5,896,260.

11 Q. And the next slide just assumes a different size  
12 enterprise at 3.5 billion. The process is the same?

13 A. Process is the same. You have two big differences  
14 here. One is the size of the organization has now been  
15 reduced to one tenth or 10 percent of that, 3.5 billion.  
16 You have three countries, and you have one multi platform  
17 in that calculation, but you would come up with a perpetual  
18 license fee of [REDACTED]. Convert that to annual with  
19 maintenance at an annual fee of [REDACTED].

20 Q. So if we were going to just take these assumptions  
21 using our, using the enterprise pricing and reducing it  
22 down to the annual fixed fee terms, that's what we're  
23 assuming some years here, so at the 35-billion-dollar  
24 enterprise, your standard annual fee, if it was five years,  
25 it 29,481,300?

1 A. That's correct.

2 Q. And under the other exercise of an enterprise a tenth  
3 the size, 3.5 billion, we're assuming on this side six  
4 years, so the math is 10,013,760?

5 A. That looks right, yes.

6 Q. Okay. And so we have two different fixed term examples  
7 based upon that pricing approach.

8 Now, this is, this is -- you know, we've  
9 concluded FICO pricing methodology. We haven't started any  
10 negotiations with the licensee at this stage?

11 A. That's correct. This is just our standard pricing.

12 Q. Now, would you just share with us the experience that  
13 you have had in terms of negotiating with the licensee for  
14 fixed term licenses?

15 A. The extent of that?

16 Q. Not all of it, but we're going to take two different  
17 assumptions, if you will. The first assumption I would  
18 like you to take and explain your experience is, assume a  
19 contract with the client has come to an end and the client  
20 wants to negotiate a new contract for a fixed term.

21 I would like to, if you would, what are the  
22 factors that in your experience have played into the  
23 negotiations that affect the price of the license fee?

24 A. Well, the first thing I would ask is, it's a fixed  
25 term, and at the end of that term, the relationship ends?

1 Q. Let's assume that.

2 A. Okay. That's very different. It's material and  
3 important in the discussions.

4 Q. Understood.

5 A. In a fixed term negotiation where the relationship is  
6 not going to go any further, the biggest factor is, that's  
7 the extent of my relationship with that client. I'm not  
8 looking beyond. I don't have a long-term value proposition  
9 with this client where I'm getting more services, more  
10 maintenance, more product sales. I am just negotiating for  
11 a period of time, and then they're going to stop using it.

12 That's actually reflected in this chart in two  
13 different avenues here, right? So if I'm not going to sell  
14 anything more to this client or the client doesn't use  
15 other Fair Isaac products or FICO products, then that has  
16 an upward pressure on my negotiation. I'm going to remain  
17 firm. This is my one opportunity to negotiate value out of  
18 the use of my software. I don't have an opportunity after  
19 this.

20 Q. Take -- what are the assumptions under which there  
21 would be -- the licensee would be able to put pressure on  
22 you to reduce your price?

23 A. Yeah. So the licensee, conversely, would not want to  
24 be paying larger fees for the software. They're going to  
25 want a lower fee. And what they have working for them is



1 how easy is it for them to turn off the software, how  
2 quickly can they turn off that software. Right? So if  
3 it's relatively easy and they can turn it off immediately,  
4 they're in a very strong negotiating position for price.  
5 They can just say, you know what, no, I'm not paying that,  
6 we'll turn it off, I'm done. Conversely, if they're in a  
7 position where they can't turn that off, then they're going  
8 to want to negotiate to other terms. And the most logical  
9 one that they would go to is a shorter period. I'm going  
10 to get off of you as soon as possible because I'm not going  
11 to pay those kind of fees.

12 So this is sort of a push/pull of a negotiation,  
13 right, because the longer they stay on the software the  
14 more value we're going to extract out of that negotiation.  
15 So it really comes down to a measure of, well, what is the  
16 term, right, and of that term what are we actually going to  
17 negotiate from a deviation or a discount off of that  
18 standard pricing.

19 So, generally speaking, the first year or two,  
20 there is really little incentive for us to discount. It's  
21 going to take at least a year, if not two, for clients to  
22 move from a position of using the software to not using the  
23 software. If they actually want to extend that to [REDACTED]  
24 [REDACTED] years, we would sort of back off of that list  
25 price. We would start discounting.

1 To sort of put a set of parameters around that,  
2 you know, if you're at a [REDACTED] period of time, a [REDACTED]  
3 [REDACTED] on that would be essentially, I'm going to  
4 sell you a [REDACTED] and give you the [REDACTED] for  
5 free. So I wouldn't go that far. I would pull back into  
6 something more like the [REDACTED] kind of range. That  
7 would be where I would go with that. If they wanted to  
8 extend to [REDACTED] maybe I would bump that [REDACTED] maybe a  
9 [REDACTED], higher than that, depending on the circumstances, but  
10 it really depends on a number of these factors here.

11 But the primary driver is, Do I have future  
12 business? Do I have current business. That's the biggest  
13 thing from the licensor side. And then the term. But what  
14 is offsetting that from the licensee side is, look, I don't  
15 need that, so I'm not going to pay that. Therefore, I'm  
16 going to take extra effort to not pay that. And those are  
17 predominantly driven by the scope of use, how quickly can  
18 they get off or turn it off.

19 Q. Okay. Then let's take the other assumption, that there  
20 is a future with the client. How does that different  
21 assumption affect the negotiating tactics and pressures  
22 that you can apply or that the licensee applies against  
23 you?

24 A. In the new business, well, probably the biggest  
25 contributor from our perspective to where we bring the

1 price point into, and actually also in this case from the  
2 licensee is, what is the long term value to FICO, how much  
3 business are we going to do with this client? We saw that  
4 previously on the transition side. It plays into the new  
5 business side equally and actually maybe even more so than  
6 in the previous scenario of a fixed period of time.

7 We have a number of clients that buy a lot of  
8 products from us, and they carry a lot of weight with us.  
9 When they speak, we listen. And so the number of products  
10 in the revenue stream we have from a particular client has  
11 a big factor; and if they come in and demand more discount,  
12 we pay attention. We negotiate, but we pay attention.

13 If, equally, you know, there is a large number of  
14 opportunities on that table of sales that we can see coming  
15 from this client, we're going to pay attention, and we're  
16 going to be a little more flexible in our price. In  
17 particular, this has to do with not just what it is today,  
18 but what it is five years from now. It matters. We have a  
19 lot of our clients today who are negotiating much bigger  
20 contracts with us on our new stuff, which is, we want to  
21 retain those customers.

22 Another factor is the size of the transaction.  
23 Very clearly, you know, you've seen that in the pricing  
24 guide, sort of the more you buy, the more you're allowed to  
25 discount. And it's, it's true across pretty much anything

1 that you negotiate in life. The more you buy, the more  
2 pricing leverage you have. You're going to get a bigger  
3 discount.

4 If you offer reference in case studies, you know,  
5 we're going to be a little more sensitive to the price. We  
6 don't actually include a particular discount for this; but  
7 if you're going to do it, we would be a little more  
8 sensitive around what we actually price to and negotiate  
9 to. And duration. Duration does play a factor in the  
10 business, it's less so here because we're looking at a  
11 long-term relationship. If you want a contract with us for  
12 two years, fine; one year, fine; five years, fine; but the  
13 anticipation is that there is business coming from you  
14 after that.

15 Q. Good. Let me show you the last slide that we have.  
16 And I think it's trying to put those two considerations or  
17 two scenarios, better said, that you just described. And  
18 what do you intend to convey by this slide?

19 A. I think it's reflective of scale of where we would go  
20 with discount. So as I mentioned before, if I'm  
21 negotiating a fixed term and that's the extent of my  
22 relationship, then I'm less inclined to go to higher  
23 discounts because I'm extracting the full value of that  
24 negotiation from that one transaction and that one period  
25 of time.

1           If I'm -- so I would limit it. You know, we  
2       talked about [REDACTED] kind of discounts. That's  
3       typically what I would see in these scenarios. But if I  
4       went further down discounting for new business, yeah, maybe  
5       I'd go to [REDACTED]. It's possible. It depends on  
6       the circumstances. So this chart just represents a  
7       relative scale there of how far we would go in a  
8       negotiation.

9           MR. HINDERAKER: Mr. Waid, thank you for your  
10      time.

11          MS. GODESKY: May I proceed?

12          THE COURT: You may.

13          MS. GODESKY: Thank you.

14                           **CROSS EXAMINATION**

15      BY MS. GODESKY:

16      Q. Good morning, Mr. Waid.

17      A. Good morning.

18      Q. My name is Leah Godesky and, I represent the defendants  
19      in this case. And you know that because you have been  
20      sitting here in court with us since the beginning of trial,  
21      right?

22      A. Correct.

23      Q. You previously sat for two depositions in this case  
24      back in 2019, correct?

25      A. Yes.

1 Q. As I think everyone understands by now, you provided  
2 sworn testimony in a conference room with lawyers just like  
3 you are under penalty of perjury here today, correct?

4 A. Correct.

5 Q. And there is a copy of your transcripts, Mr. Waid, in  
6 the binder that's in front of you, along with a copy of the  
7 transcript from yesterday.

8 A. Okay.

9 Q. Now, Mr. Hinderaker started your direct examination  
10 yesterday by having you talk about certain sections of  
11 Chubb's Blaze license agreement. Do you remember that?

12 A. I do.

13 Q. It is not your responsibility at FICO to interpret  
14 FICO's contracts. You rely on the legal department to do  
15 that, correct?

16 A. I do.

17 Q. And Mr. Hinderaker asked you yesterday whether you were  
18 part of any discussions in the 2006 time frame about the  
19 client in the Blaze license agreement being anything other  
20 than Chubb & Son. Do you remember that?

21 A. I have to say I don't remember that.

22 Q. Okay. Let's, let's refresh your recollection and look  
23 at the trial transcript. It's in the binder in front of  
24 you. Do you see the side tab that says Trial Transcript?

25 A. Yes.

Q. And then if you could go to page 1636.

A. I'm there.

Q. And if you go to line 6, Mr. Hinderaker asked you, "Were you part of any discussions during that time frame of Chubb & Son wanting to sign -- of any discussion about the client being anybody else but Chubb & Son?"

And your answer was "no," correct?

A. Yes, because I wasn't part of any discussions.

Q. And that's exactly right. You don't have any specific memories of communications with Chubb in the 2006 time period, correct?

A. Absolutely not.

Q. All you can say is that you would have signed off on the pricing of the agreement because that's part of your job to sign off on pricing of enterprise-wide license agreements, correct?

A. Yes, it is.

Q. Now, you understand as the corporate representative that one of the breach of contract claims that FICO is bringing in this case relates to Section 10.8 of the license agreement, correct?

A. Yes.

Q. And you looked at that provision yesterday with Mr. Hinderaker, and I'm hoping we can pull it up on the screen. It's in Joint Exhibit 1, at page 8.

1 Thank you, Vanessa. And if we could highlight  
2 the second sentence of Section 10.8.

3 Now, you testified yesterday, Mr. Waid, that in  
4 your mind the business meaning of this second sentence is  
5 that if one of these events happens, a merger or an  
6 acquisition, FICO needs to consent to it, correct?

7 A. It's deemed an assignment, and we must consent.

8 Q. In your mind, this provision means that if there is an  
9 acquisition, FICO's consent is needed to keep using Blaze,  
10 hard stop, correct?

11 A. It is my opinion that if one of these events occur, it  
12 is an assignment and consent from FICO is required, yes.

13 Q. In all circumstances?

14 A. In all of these events, yes.

15 Q. Okay. I want to take a look at P123, which is already  
16 in evidence.

17 And you can see at the top, Mr. Waid, this is an  
18 e-mail chain between Russ Schreiber and Mike Sawyer at FICO  
19 in fall 2015 after they heard about the ACE acquisition,  
20 correct?

21 A. I need to get to it.

22 Q. Sure.

23 A. I'm sorry. What was -- P what?

24 Q. 123.

25 A. I'm sorry. What was your question?



1 Q. This is an e-mail chain between Russ Schreiber and Mike  
2 Sawyer at FICO, right?

3 A. It appears to be, yes.

4 Q. And the time period is fall 2015. So this would be  
5 after they heard about the ACE acquisition, correct?

6 A. I wouldn't know.

7 Q. They're both part of FICO's sales team, right?

8 A. They are, yes.

9 Q. And Mr. Schreiber was pretty senior?

10 A. Yes, he was.

11 Q. You described Mr. Schreiber yesterday as the global  
12 insurance lead, right?

13 A. Yes, he was.

14 Q. He was Mr. Sawyer's boss?

15 A. Yes, he was.

16 Q. And you spoke yesterday about how you communicated with  
17 Mr. Sawyer and Mr. Schreiber after the ACE acquisition was  
18 announced about FICO's rights under the contract, right?

19 A. That is correct. In November.

20 Q. Right around this time period, fall 2015, correct?

21 A. This is dated October.

22 Q. Roughly the same time period, right?

23 A. It's 30 some odd days later. No, I don't agree.

24 Q. Okay. Let's go to the bottom of the e-mail chain on  
25 page 3. And there is an e-mail from Mr. Sawyer to

1 Mr. Schreiber on October 7 titled Chubb Language. Do you  
2 see that?

3 A. Yes, I do.

4 Q. And Mr. Sawyer says, "I think we're in a good spot.  
5 See below. First excerpt is from the MSLA and states they  
6 have no assignment rights." Do you see that?

7 A. I see what he wrote, yes.

8 Q. And then he goes on to talk about other provisions of  
9 the Chubb's license agreement, correct?

10 A. I need a moment to read.

11 Q. Sure.

12 A. I've read it, yes.

13 Q. So then he goes on to quote other provisions, right,  
14 generally reference them?

15 A. Provisions as in -- yes. Yes, provisions.

16 Q. Then let's look at the next e-mail chain moving up.

17 A. Okay.

18 Q. This is Mr. Sawyer's response -- I'm sorry --  
19 Mr. Schreiber. Do you see that?

20 A. Yes.

21 Q. He says, "The unreasonably withheld bit has me a little  
22 concerned, so it may come down to how did we size the  
23 enterprise discussion." Correct?

24 A. That's what it says.

25 Q. Mr. Schreiber didn't say, "Mike, I agree we're in a

1 good spot. The business purpose of all of our agreements  
2 is always to make sure that if there is an acquisition, we  
3 have to consent." He didn't say that, right?

4 A. It's not in the e-mail.

5 Q. It's not in the e-mail. And Mr. Schreiber said he's  
6 not so sure. He says, "The unreasonably withheld bit has  
7 him a bit concerned." Correct?

8 A. That's what it says in the e-mail, yes.

9 Q. And that's a reference by Mr. Schreiber to the second  
10 sentence of Section 10.8 where FICO agreed not to  
11 unreasonably withhold --

12 THE COURT: Hang on a second.

13 MR. HINDERAKER: I object to examination that's  
14 outside the scope of the witness's knowledge. He has no  
15 knowledge of these conversations between other people.

16 THE COURT: Overruled.

17 BY MS. GODESKY:

18 Q. So, Mr. Waid, this is a reference by Mr. Schreiber to  
19 the second sentence of Section 10.8 and FICO's agreement to  
20 not unreasonably withhold consent to continued use of  
21 Blaze, correct?

22 A. I don't know that.

23 Q. Let's look at Mr. Sawyer's response. Mr. Sawyer on the  
24 next e-mail up in the chain, he says, "I'm not as concerned  
25 about it." Do you see that?

1 A. I see it, yes.

2 Q. And then he sort of makes the argument we heard you  
3 make yesterday about revenue increasing. He says, "Chubb  
4 had 12.3 billion in GWP in 2014 compared to ACE's 23  
5 billion." Do you see?

6 A. I see that, yes.

7 Q. And you testified yesterday that FICO always has these  
8 absolute rights in circumstances of an acquisition because  
9 it could materially change the basis on which the license  
10 was granted and priced, right?

11 A. I believe I said it's a material change in  
12 circumstances.

13 Q. You said it could materially change the basis on which  
14 the license was granted and the price was set.

15 A. If you say so, that sounds right.

16 Q. It sounds right. But Mr. Schreiber, the insurance  
17 global lead at FICO, he still wasn't so sure, right? Let's  
18 look at his response. This is October 7th at 9:53 a.m.

19 A. Are we in the same document?

20 Q. Yep. Just moving up one e-mail.

21 And Mr. Schreiber says, "Is the license  
22 specifically tied to GWP?" Do you see that?

23 A. I do, yes.

24 Q. And GWP, as we have all learned, in the world of  
25 insurance is revenue, right, gross written premium?

1 A. Yes. Correct.

2 Q. And then let's go to the front page of this exhibit,  
3 and the second to top e-mail is Mr. Schreiber again. He  
4 says, "Nothing in the contract? I can dig up the proposal,  
5 but it was a decade ago." Do you see that?

6 A. Yes.

7 Q. In then Mr. Sawyer's response, he starts by attaching  
8 all the contracts to Chubb. And he says, "I don't see  
9 anything on GWP in the agreements," correct?

10 A. That is correct, yes.

11 Q. And you have been in court watching all of the  
12 testimony as it's come in, right?

13 A. Yes.

14 Q. And you saw Mr. Schreiber's deposition video played  
15 during that first week of trial, correct?

16 A. Yes.

17 Q. And Mr. Schreiber testified at deposition that he asked  
18 Mr. Sawyer whether the contract specifically referenced  
19 revenue because then it would have been clear. Do you  
20 remember Mr. Schreiber testifying to that?

21 A. I don't.

22 Q. Mr. Schreiber was asking if the Chubb agreement  
23 referenced revenue, because he knows that some Blaze  
24 license agreements do specifically reference revenue in the  
25 assignment provisions, correct?

1 A. Yes, some of them actually do negotiate to specific  
2 revenue.

3 Q. Let's take a look at Exhibit D77. And this is not in  
4 evidence yet, so we're not going to publish it. Let me  
5 know when you're with me, Mr. Waid. I know the binder is  
6 large.

7 A. I believe I'm there, yes.

8 Q. Okay. And this is a November 29th, 2010, software  
9 license agreement between FICO and [REDACTED],  
10 correct?

11 A. It appears that way, yes.

12 Q. And it's a license for Blaze Advisor. I can help you  
13 if you look at page 14.

14 A. Just give me a minute. It is a license for Blaze  
15 Advisor.

16 Q. And also if you look at page 14, you can see that this  
17 was an [REDACTED]  
18 Do you see that?

19 A. And [REDACTED] correct.

20 Q. And that means you would have approved it?

21 A. It would have come to me for approval, yes.

22 MS. GODESKY: Okay. Defendants offer D77 into  
23 evidence.

24 MR. HINDERAKER: No objection, Your Honor.

25 THE COURT: D77 is received.

1 MR. HINDERAKER: Subject to the earlier  
2 practices?

3 THE COURT: Correct.

4 BY MR. GODESKY:

5 Q. Okay. Mr. Waid, let's look at page 10. And we can put  
6 this on the screen for the jury.

7 Do you see there is an assignment delegation  
8 clause in this contract?

9 A. A very large one, yes.

10 Q. And it starts by saying, [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] Correct?

16 A. Yes.

17 Q. And then the next sentence goes on to talk about a  
18 deemed assignment. Do you see that reference? It says,

19 [REDACTED]

20 [REDACTED]

21 A. Yes, I'm with you.

22 Q. And then I want you to go down in this paragraph and  
23 find the sentence that starts with, [REDACTED]

24 [REDACTED]

25 Maybe Vanessa can highlight it and help us find

1 it.

2 A. I'm there, yes.

3 Q. Okay. It says, [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] Do you see that?

7 A. Yes.

8 Q. And then it says, [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] Do

19 you see that?

20 A. Yes, I do.

21 Q. And this language does not appear in the Blaze license  
22 agreement that FICO entered with Chubb, correct?

23 A. Absolutely not.

24 Q. In fact, the word "revenue" doesn't appear in  
25 Section 10.8 of the Chubb agreement at all, correct?



1 A. Absolutely not.

2 Q. And this doesn't say that FICO will definitely get more  
3 fees if all these things happen, right? When it references  
4 additional fees, it says [REDACTED]

5 A. Yeah, absolutely.

6 Q. And this is the language that Mr. Schreiber hoped to  
7 see in Chubb's agreement, right, when he said, Does it  
8 specifically reference revenue?

9 A. I don't think that's what he meant.

10 Q. Okay. Vanessa, if we could go back to Joint Exhibit 1  
11 and look at page 8, which is our assignment provision,  
12 again, and if we could highlight the second sentence.

13 Mr. Waid, you testified yesterday during direct  
14 with Mr. Hinderaker that another purpose of the second  
15 sentence of Section 10.8 was to make sure that Blaze is  
16 locked down until FICO gives this consent, right?

17 A. Yes. That's correct.

18 Q. And you said from the business point of view, there is  
19 a 30-day cure period where this lockdown is in effect,  
20 right?

21 A. Generally speaking, 30 days is what we actually put in  
22 our contracts.

23 Q. There is no reference in the second sentence of  
24 Section 10.8 to a 30-day cure period, correct?

25 A. It usually occurs in another section of the contract.

1 Q. But there is no reference in Section 10.8 to a 30-day  
2 cure period?

3 A. It doesn't typically end up there, correct.

4 Q. Okay. I want to talk about expanded use. So it is  
5 established at this point, Mr. Waid, that Mr. Carretta, the  
6 deputy general counsel at FICO, sent general counsel at  
7 Chubb Limited a letter accusing Chubb of breach in January  
8 of 2016, correct?

9 A. I don't know the exact date, but, yes, you're generally  
10 in the ball park.

11 Q. January 2016 is the right month, right?

12 A. Is this a memory test? I don't know. It's January  
13 somewhere.

14 Q. I'm happy to refresh your recollection. We can pull up  
15 P90.

16 A. Okay.

17 Q. Mr. Waid, this is a letter from FICO to Mr. Joe Wayland  
18 at Chubb dated January 27, 2016?

19 A. That's correct.

20 Q. So I want to look at Chubb's response to Mr. Carretta's  
21 letter, which is in evidence as P91. And if we could go to  
22 the second paragraph on the first page --

23 A. I'm sorry. Do I have that?

24 Q. I think so. It might be in the binder that you used  
25 with Mr. Hinderaker, if you don't mind looking at that one.

1 A. P19?

2 Q. Yes.

3 A. Got it.

4 Q. Okay. So we're in the second paragraph, second  
5 sentence. Mr. Hopp wrote -- and this is in response to  
6 Mr. Carretta's breach letter, right?

7 A. Yes.

8 Q. He says, "While we continue to evaluate our use and  
9 needs, our initial findings indicate that the applications  
10 that have been utilizing Blaze Advisor software since 2006  
11 are currently running in the exact same fashion as prior to  
12 the merger transaction." Correct?

13 A. It says that, yes.

14 Q. And you talked about that sentence with Mr. Hinderaker  
15 yesterday. And you said that this was fairly characterized  
16 as an assurance from Chubb that Blaze use was locked down,  
17 right?

18 A. That's the way I took it, yes.

19 Q. It wasn't expanding, correct?

20 A. I took that as yes.

21 Q. And you said, It reassured you, right?

22 A. Yes.

23 Q. You also said you weren't sure how convinced you were.  
24 Do you remember saying that?

25 A. That is correct, yes.

1 Q. But you had no evidence as of February 17th, 2016,  
2 suggesting that this statement from Mr. Hopp was false?

3 A. Absolutely not.

4 Q. So as of February 17th, 2016, you're generally feeling  
5 reassured. It's locked down. There is no expanded use.  
6 Fair?

7 A. I was happy that he wrote that. I had concerns.

8 Q. Okay. So as of February 17th you're happy, generally  
9 reassured, right?

10 A. I appreciated it, yes.

11 Q. Now, I want to look at another communication from Chubb  
12 a few days later on February 25th. This is in evidence as  
13 P94. And this is a message that Ms. Tamra Pawloski at  
14 Chubb sent Mr. Sawyer and Mr. Schreiber, correct?

15 A. One second. Am I looking at the e-mail or the letter?

16 Q. There is an e-mail from her that's the first page,  
17 right, and then she has attached her proposal?

18 A. Right. You want me to look at the e-mail?

19 Q. The e-mail is from Ms. Pawloski, right?

20 A. Yes, it is.

21 Q. Okay. And then if you look at the second page of the  
22 document, it says FICO Proposal, February 25th, 2016,  
23 correct?

24 A. Yes.

25 Q. So we're eight days later from where you're pretty

1 happy and generally reassured about the lockdown.

2 A. Yeah.

3 Q. Okay. Now yesterday you declared this message from  
4 Ms. Pawloski a nonstarter. That basically means it cannot  
5 be accepted at face value. That's what you said, right?

6 A. Absolutely.

7 Q. Okay. So let's look at the first paragraph. And in  
8 the first paragraph Chubb says, "Although Chubb strongly  
9 disagrees with FICO's stated position, in a good faith  
10 effort to move the relationship forward, Chubb proposes  
11 that the parties renegotiate Chubb's current perpetual,  
12 unlimited, application-based enterprise license to  
13 downgrade and limit use of Blaze Advisor development and  
14 deployment to reflect Chubb's actual usage of 15 named  
15 applications of Blaze Advisor deployment and 100 seats of  
16 Blaze Advisor development at no additional cost to Chubb."

17 Do you see that.

18 A. Yes, I do.

19 Q. So this was an offer from Chubb to switch from its  
20 perpetual license with no limit on the number of  
21 applications to a license that would have limited Chubb to  
22 15 applications, correct? That's what we see here, first  
23 paragraph.

24 A. That's what is in that first paragraph.

25 Q. I'm only focused on the first paragraph.

1 A. I figured.

2 Q. And then it says in the next sentence, "All usage now  
3 and going forward does not and will not change from that  
4 permitted under the current license agreement and all usage  
5 remains with the same named applications." Correct?

6 A. That's what it says, yes.

7 Q. So, Mr. Waid, what we've read so far sounds like it's  
8 an agreement not to expand, correct?

9 A. No.

10 Q. It's still pretty locked down, right, Mr. Waid?

11 A. No.

12 Q. In the next sentence of the paragraph, it says, "Under  
13 this proposal, Chubb will continue to pay for maintenance  
14 at the current cost of about \$237,000 per year in  
15 accordance with the terms of the parties' current  
16 agreement." That's what it says, right?

17 A. That's what it says, yes.

18 Q. And, by the way, Chubb did pay hundreds of thousands of  
19 dollars to FICO for maintenance over the course of their  
20 relationship, right?

21 A. Yes.

22 Q. And that totaled many millions of dollars?

23 A. Yes. Had to do the math.

24 Q. Now, again, you declared this yesterday a bad faith  
25 proposal. And you pointed to the next part of

1 Ms. Pawloski's message, correct?

2 A. Correct.

3 Q. And the first sentence of that next section --

4 If we could go down, Vanessa. I'm looking under  
5 "Utilization of Blaze Advisor." Thank you.

6 The first sentence says, "The applications listed  
7 below are those applications that currently utilize the  
8 Blaze Advisor software. These are the same applications  
9 utilizing the software both prior to and after the merger."  
10 Right?

11 A. That's what it says, yes.

12 Q. So far same message that you got from Mr. Hopp,  
13 reassuring, lockdown, not expanding, so far, right?

14 A. No, I don't think it says that.

15 Q. But it was really the next sentence that you pointed to  
16 yesterday as bad faith by Chubb, right, the nonstarter?

17 A. Correct.

18 Q. And that next sentence says, "Under the above proposal,  
19 Chubb shall have the right to change the applications  
20 utilizing the Blaze Advisor software at any time in its  
21 sole discretion without FICO's consent so long as the named  
22 applications do not exceed an amount of 15." Right?

23 A. That's what it says.

24 Q. And when you were asked about this second sentence by  
25 Mr. Hinderaker yesterday, you said, "Our clients don't

1 grant licenses themselves." Right? Do you remember saying  
2 that?

3 A. That is correct, yes.

4 Q. And you said, "There's no governance in that statement.  
5 They could call anything an application and say that's  
6 going from here to there. There is no definition. There  
7 is no common understanding and that threw the proposal out  
8 of question." Do you remember saying that?

9 A. Yes.

10 Q. And, Vanessa, if we could bring up P95, which is in  
11 evidence.

12 We see the response from Mr. Carretta less than  
13 24 hours later, right? You've seen this before. He says,  
14 "The proposal is not acceptable, and I confirm it's  
15 rejected." Right?

16 A. That is correct, yes.

17 Q. And you testified yesterday you authorized him to send  
18 that e-mail?

19 A. Absolutely.

20 Q. You said Ms. Pawloski's e-mail was in bad faith because  
21 there was no common understanding or definition, right?

22 A. I don't know that I said that, but I did say bad faith,  
23 yes.

24 Q. But you lamented the fact that there was no common  
25 understanding or definition in her proposal. That's what



1 you said yesterday, right?

2 A. Yeah, I can't -- I don't remember.

3 Q. I want to refresh your recollection about that.

4 A. Okay.

5 Q. Can we go back to the trial transcript at 1663?

6 A. I'm there.

7 Q. And at line 16 you said, "Our clients don't grant  
8 licenses themselves. That's a core tenet of our license  
9 agreement. Besides that, fundamentally there is no  
10 governance on that statement. They could call anything,  
11 you know, an application and say that's going here from  
12 there to here." Right?

13 A. Correct.

14 Q. And then you went on, Mr. Waid, to say, "There is no  
15 definition of it. There is no common understanding of it.  
16 That alone completely threw the proposal out of question."  
17 That was your testimony yesterday?

18 A. Yes.

19 Q. Okay. Before Mr. Carretta sent that e-mail less than  
20 24 hours later saying that the proposal is rejected, you  
21 didn't make any effort to propose a common understanding,  
22 correct?

23 A. That is incorrect.

24 Q. You don't have any record of going back to  
25 Ms. Pawloski, correct?

1 A. Yes, I do.

2 Q. Now, you heard Mr. Whitener in the courtroom yesterday,  
3 right?

4 A. Yes.

5 Q. FICO's Blaze Advisor and insurance expert, correct?

6 A. Yes.

7 Q. And he testified that a lot of different applications,  
8 like DecisionPoint and Premium Booking, are included in the  
9 CSI Express application, right? They're part of it.

10 A. The umbrella called CSI Express, the policy management  
11 system, yes.

12 Q. It includes these separate pieces, DecisionPoint and  
13 Premium Booking, right?

14 A. There are separate application business functions  
15 inside of CSI Express for specialty lines insurance,  
16 correct.

17 Q. Okay. And if we go back to Ms. Pawloski's proposal,  
18 which is again, Vanessa, at 94, P94.

19 And if we could go down to the list of  
20 applications, you see that Ms. Pawloski's proposal  
21 separately lists DecisionPoint and Premium Booking and CSI  
22 Express, right?

23 A. It does, yes.

24 Q. So that suggests she was trying to be overinclusive,  
25 not deceitful and underinclusive, right?

1 A. I don't have any reason to believe she was being  
2 deceitful at all, no.

3 Q. And you heard testimony a few days ago from Chubb  
4 architect Claudio Ghislanzoni, right?

5 A. Yes.

6 Q. And he testified that around this time period in early  
7 2016 he was instructing his colleagues in Australia, Do not  
8 add Blaze to a new application, right, because our policy  
9 is we cannot expand use, correct?

10 A. I heard that eventually that message got out to the  
11 team, yes.

12 Q. And as of February 26th, 2016, when Mr. Carretta sent  
13 his "Your proposal is rejected e-mail," you didn't have any  
14 evidence that Chubb had added Blaze to new applications,  
15 right?

16 A. No, I did not.

17 Q. And in fact, as you said earlier, just eight days  
18 earlier, by February 17th you were pretty reassured things  
19 had been locked down, right?

20 A. That's not what I said. I said I was happy he said  
21 that.

22 Q. You were reassured?

23 A. It gave me some comfort, yes.

24 Q. You said "reassured."

25 A. I was reassured, yes. Thank you.

1 Q. And you didn't receive any new information between  
2 February 17th and February 26th calling that reassurance  
3 into doubt, correct?

4 A. No.

5 Q. And, yet, you still authorized that e-mail from  
6 Mr. Carretta, "Your proposal is rejected," correct?

7 A. Yes, because it was.

8 Q. Okay. We can take that down. Thank you, Vanessa.

9 I want to talk now about this issue with the DWS  
10 consultant in Australia.

11 A. Okay.

12 Q. And if we could pull up Exhibit P1114, which you looked  
13 at with Mr. Hinderaker yesterday.

14 A. I'm there.

15 Q. And I want to look at a part of the chain we didn't see  
16 yesterday, which is on the bottom of page 3.

17 And this is a message from Mike Sawyer. We're in  
18 March 2016. Do you see that? The e-mail is 1:26 a.m.  
19 That's the time stamp.

20 A. Yep. I'm there. Yep.

21 Q. And this is a message to Mr. Paul Swyny, right?

22 A. Swyny, right.

23 Q. Swyny. Thank you.

24 And yesterday you called Mr. Swyny, quote, "The  
25 client partner who owned the Chubb Insurance Company of

1 Australia account. Do you remember saying that?

2 A. Yes.

3 Q. So it's your testimony that FICO had assigned a client  
4 partner to Chubb Australia, but didn't know Chubb Australia  
5 was using Blaze? That's your testimony?

6 A. No, that's not my testimony. My testimony was that  
7 there was a client partner assigned to Chubb. Is there a  
8 following question you have for me?

9 Q. Your testimony was that there was a client partner who  
10 owned the Chubb Insurance Company of Australia account,  
11 right?

12 A. Yeah. Absolutely.

13 Q. And it's also your testimony that FICO didn't know  
14 Chubb Australia was using Blaze, correct?

15 A. That's correct. Yes.

16 Q. Okay. So let's look at Mr. Sawyer's directive to  
17 Mr. Swyny regarding DWS, and I want to look at the last  
18 sentence of the first paragraph.

19 He says, "Please continue to be responsive to  
20 DWS, but do not make any statements regarding Chubb's  
21 rights to use the software." Do you see that?

22 A. I do.

23 Q. And you're on this chain, right?

24 A. I am.

25 Q. And you didn't jump in and say, Wait, Mike, under

1 Section 3.1 of the contract we cannot let DWS have any  
2 access to Blaze, right? You didn't say that.

3 A. I did not, no.

4 Q. You were fine with the idea that FICO would continue to  
5 be responsive, correct?

6 A. I was fine that we would continue to be responsive,  
7 yes.

8 Q. And DWS wasn't sneaking around and trying to hide that  
9 it was accessing Blaze, right?

10 A. Absolutely not.

11 Q. We saw that folks were e-mailing FICO from at DWS.com  
12 e-mail addresses, right?

13 A. Absolutely.

14 Q. And they were joining FICO in chat rooms and  
15 identifying themselves openly, correct?

16 A. Absolutely.

17 Q. Okay. We can take that down. Thank you.

18 Now I want to talk about pricing of Blaze  
19 licenses. Okay?

20 A. Okay.

21 Q. And as we discussed earlier, you understand that FICO  
22 is suing Federal for breach of contract in this case,  
23 right?

24 A. I'm not a lawyer.

25 Q. But, you know, you went through all those contract

1 provisions with Mr. Hinderaker yesterday because you  
2 understand there is a claim in this case that Federal  
3 breached Section 10.8, right?

4 A. I think the lawsuit is much bigger than just the  
5 breach, but I'm not a lawyer.

6 Q. But you understand there is a breach claim, right?

7 A. I understand that there is a copyright claim, and I  
8 understand that there is a use claim, yes.

9 Q. And you told me a few minutes ago when we started this  
10 examination that you also understood FICO is suing for  
11 breach of 10.8, the assignment provision, right?

12 A. We, we terminated the agreement because of 10.8. I  
13 don't know about this suing for. I wasn't part of the suit  
14 filing, so I can't comment on what we sued for.

15 Q. Okay. Fair enough. So do you generally understand,  
16 Mr. Waid, that the idea here is that if FICO proves a  
17 breach of contract, it's asking for damages in the form of  
18 lost license fees. Do you generally understand that?

19 A. Oh, yeah, that I understand.

20 Q. Okay. And that's why we're talking about how FICO  
21 prices Blaze licenses?

22 A. That's correct.

23 Q. It goes to the damages claim, right?

24 A. Well, the jury gets to decide what that is. I'm just  
25 providing pricing.

1 Q. Right.

2 A. Our standard pricing.

3 Q. Relative to damages?

4 A. Yes.

5 Q. Okay. I'd like to take a look at P517. This is one of  
6 the documents you just looked at with Mr. Hinderaker.

7 And you walked through some of the information in  
8 this chart of Chubb use of Blaze, right?

9 A. Correct.

10 Q. And you were using it in the context of talking about  
11 how you do application-based pricing at FICO, right?

12 A. Sizing.

13 Q. Sizing. And this document is something that FICO  
14 received in litigation in 2018 or 2019, right?

15 A. I'm not sure when it was received.

16 Q. But you understand it was received as part of the  
17 litigation?

18 A. It was post termination, so yes.

19 Q. Okay. When potential customers are negotiating a Blaze  
20 license and the pricing, you don't typically have all of  
21 this detailed information, right?

22 A. No, we don't.

23 Q. No.

24 A. Typically we have less information, yes.

25 Q. You generally don't know how many [REDACTED] and



1 [REDACTED] is running in your software when you're  
2 negotiating pricing?

3 A. We have a better understanding of [REDACTED] but  
4 [REDACTED] is tough.

5 Q. You don't know like [REDACTED]  
6 [REDACTED], right? They don't usually turn that over?

7 A. That's one of the stronger metrics we usually get,  
8 yeah.

9 Q. But you can agree, Mr. Waid, you don't get this level  
10 of detail from every customer you're negotiating with?

11 A. I already agreed to that, yes.

12 Q. And in fact, you didn't know how Chubb was using Blaze  
13 until 2018, 2019 when you received this as part of the  
14 litigation, right?

15 A. I didn't know the full extent of what Chubb was using  
16 until I got the proposal letter in February.

17 Q. And usually you're mainly pricing off of publicly  
18 available information, right?

19 A. Oh, no. We actually get the information directly from  
20 the client. We take it at face value that they're acting  
21 in good faith, and we use that information.

22 Q. You actually technically have the information that --

23 A. Yes, we do. Yeah, yeah, yeah. For the enterprise  
24 licensing. Sorry. Yes.

25 Q. Okay. Now, as you established with Mr. Hinderaker --

1 and we can take that down, Vanessa, thank you -- FICO has a  
2 price list that it uses in figure out what to charge  
3 customers, right?

4 A. Yes.

5 Q. And that price list has been in place since 2003?

6 A. The model has been in place since 2003.

7 Q. Hasn't changed?

8 A. The model has not changed.

9 Q. Now sometimes FICO's customers license Blaze so that it  
10 can be used in a particular managed computer application,  
11 right?

12 A. I would say business application, but yes.

13 Q. And then as you said yesterday, generally speaking, as  
14 clients buy more application licenses from us and they  
15 spend more money, it becomes easier for them to license an  
16 enterprise-wide license?

17 A. Absolutely.

18 Q. And when your customers start to use Blaze in more than  
19 three or four applications, it's FICO's general practice to  
20 offer them an enterprise-wide license?

21 A. It was, yes.

22 Q. And it was at least as of 2019, correct?

23 A. Oh, absolutely.

24 Q. Okay. And an enterprise-wide license is one where you  
25 lift the restrictions on the number of people and

1 applications that can use Blaze and you price based on the  
2 size of the organization?

3 A. I would say exception to the word "people," but you're  
4 generally correct, yes.

5 Q. Now, I notice that you said yesterday, Today we don't  
6 sell enterprise license agreements anymore. Do you  
7 remember that?

8 A. Yeah, we've moved away from them.

9 Q. But you do still have a whole section of your pricing  
10 guide devoted to enterprise licenses, right?

11 A. We haven't taken it away, no. And under the right  
12 circumstances would we sell it? Probably.

13 Q. And at least as of 2018, 2019, FICO was still selling  
14 enterprise-wide licenses, right?

15 A. Yes.

16 Q. Let's pull up the pricing guide, which is in evidence  
17 as P418. Mr. Waid, if we could look at page 3.

18 A. I am there.

19 Q. It says "License Types" at Section 2.1.1, correct?

20 A. Correct.

21 Q. If we could blow that up, Vanessa. Thank you.

22 If you look at the third sentence it says, [REDACTED]

23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED] Do you see?

1 A. I do.

2 Q. And "perpetual" means forever?

3 A. As long as the license agreement terms are in place,  
4 yes.

5 Q. No end date?

6 A. There is no term, no.

7 Q. And the Blaze license that Chubb purchased in 2006 was  
8 perpetual, right?

9 A. Yes, it was.

10 Q. Now, I heard you say yesterday that you're also moving  
11 away from perpetual licenses, right?

12 A. We are, yes.

13 Q. But to be clear, as of 2018, FICO was still offering  
14 customers perpetual licenses?

15 A. Yes. Correct.

16 Q. They were an option?

17 A. Absolutely.

18 Q. They're still an option today?

19 A. They are still an option today, yes.

20 Q. And you testified this morning then in that 2016 period  
21 it was sort of a mixed bag between perpetual and limited in  
22 time, right?

23 A. We had started moving away from perpetual in 2015, and  
24 it was starting to become more annual in that time period,  
25 but still a mixed bag.

1 Q. Okay. So let's talk about how you price  
2 enterprise-wide Blaze licenses. We have all heard FICO's  
3 witnesses say that the company uses value-based pricing,  
4 right?

5 A. Correct.

6 Q. And that means as a general matter, FICO tries to make  
7 sure that its pricing reflects the value that Blaze  
8 generates for the customer. That's what you're trying to  
9 do?

10 A. Trying to, yes.

11 Q. And when you reference value in this context, you're  
12 talking about cost savings for the company or profit,  
13 right?

14 A. No, not always. Sometimes it's ease of doing business  
15 and revenue growth.

16 Q. Okay. Value?

17 A. Value, yeah.

18 Q. Okay. Let's look at page 17 of the pricing guide. And  
19 this is where we see the section on Blaze Decision  
20 Management, right?

21 A. Correct.

22 Q. And then let's flip forward a few pages to page 21.  
23 And that's where we see this Enterprise/Business Unit  
24 Pricing Guidelines, right?

25 A. Correct.

1 Q. So application pricing, you deal with that sizing grid  
2 that you walked through with Mr. Hinderaker, right?

3 A. I'm sorry. I was reading. I didn't pay attention.  
4 Sorry.

5 Q. Sure. So I just want to draw a distinction. If you're  
6 talking about application-based pricing, you're using that  
7 sizing guide?

8 A. That's correct. Absolutely correct.

9 Q. When you deal with enterprise-wide pricing, you're  
10 focusing on the size of the customer?

11 A. That's correct, and other factors.

12 Q. And you said yesterday that FICO views the size of the  
13 customer and its revenues as a proxy for that value?

14 A. Correct.

15 Q. And there is, of course, a degree of judgment involved,  
16 right?

17 A. Yeah. The judgment has to come down to, you know, the  
18 organization and some of these factors that are actually on  
19 the screen right now.

20 Q. Yeah. That's what I would like to look at. So if you  
21 look at the pricing guide, it says appropriate Blaze  
22 enterprise pricing is a function of [REDACTED], right?

23 A. At the time, yes.

24 Q. And there is these bullets?

25 A. Yep.

Q. The first factor is, [REDACTED]

correct?

A. Yes.

Q. Next is [REDACTED]

A. Yes.

Q. And then it says, [REDACTED]

A. Yes.

Q. We've heard about [REDACTED] in this trial,  
right?

A. Yes.

Q. But determines [REDACTED] -- it's in the pricing  
guide because you agree that [REDACTED] reflects the  
value that Blaze is bringing to a customer, right?

A. Yeah, it might actually be -- [REDACTED] It's

Q. The pricing guide says [REDACTED], right?

A. That's what it says, yes.

Q. And the idea is that Blaze is bringing more value to  
the customer because [REDACTED] right?

1 A. It also says [REDACTED], so it's  
2 both. That's my point. It's both.

3 Q. Next is [REDACTED] right?

4 A. Yes.

5 Q. You're considering is Blaze helping the [REDACTED]  
6 [REDACTED]

7 A. Absolutely.

8 Q. And then [REDACTED]  
9 [REDACTED] right?

10 A. Absolutely.

11 Q. Essentially is Blaze contributing to profit at all?

12 A. I wouldn't go so far as profit. It just says [REDACTED]  
13 [REDACTED]

14 Q. And then finally the [REDACTED]  
15 [REDACTED] both currently and in  
16 the future, right?

17 A. Yes, as I said also in my testimony as well.

18 Q. Now if you look under the bullets we were just reading,  
19 there is a box that provides guidance on how to come up  
20 with an enterprise price based on the revenue of the  
21 customer, right?

22 A. Yes.

23 Q. And this is the concept of the proxy we were talking  
24 about?

25 A. Yes.



1 Q. So if you have a smaller company with up to [REDACTED]

2 [REDACTED] in sales, you're looking at about a [REDACTED]

3 enterprise-wide license fee, right?

4 A. That's what it says, yes.

5 Q. And then if you are a large company with [REDACTED] in  
6 revenues, you're probably going to pay more, right?

7 A. Yeah.

8 Q. And the recommendation in this guide is [REDACTED]

9 A. That is correct, yes.

10 Q. Again, enterprise-wide, no limitation on applications?

11 A. No limitations on the number of applications, correct.

12 Q. And now if a customer falls in between two of these  
13 categories, so let's say they have [REDACTED] in

14 revenue a year, so you're in between medium and large,

15 you're going to sort of prorate the fee and try to target a  
16 number between the [REDACTED]

17 A. Yeah, we call it extrapolation, but yes.

18 Q. The high end on this chart is an extremely large

19 company with [REDACTED] in revenue,  
20 right?

21 A. That's where the table stops, correct.

22 Q. And the recommendation in the pricing guide is to add

23 [REDACTED]  
24 [REDACTED], right?

25 A. I wouldn't call it a recommendation, but, yes, that's

1 what it says.

2 Q. That's the guide in the pricing guide?

3 A. It is the pricing guide, yes.

4 Q. So if you have a huge, giant [REDACTED]  
5 company, the guideline here is that [REDACTED] dollars is  
6 your starting point for a license fee, right, because you  
7 have your [REDACTED], and then you're going to add  
8 another [REDACTED]

9 A. Yeah, your math is correct.

10 Q. Again, the idea here is it's an art, not a science,  
11 right?

12 A. Yes.

13 Q. And you're trying to price in a way that you believe  
14 reflects the value that Blaze brings to your customer's  
15 company?

16 A. Based on our experience, yes.

17 Q. And in terms of where FICO goes to get these revenue  
18 numbers, it's working off publicly available information  
19 mostly?

20 A. Mostly, yeah. We do ask the clients, though.

21 Q. Ultimately, it comes from the 10-K, those annual  
22 reports that are filed?

23 A. Yes, the 10-K.

24 Q. Okay. So now I want to talk about discounts.

25 If we go, Vanessa, to page 3 of the FICO price

list. It's the same document. Thank you. Page 3.

So at the bottom of page 3 we see discount schedules, right, Mr. Waid?

A. Correct.

Q. This is the standard discount table for perpetual Blaze licenses, right?

A. As of 2003.

Q. You haven't changed the guide, right?

A. Yes, we have.

Q. But you don't have an updated written guide, correct?

A. No. It's actually part of our sales force automation system.

Q. And you apply these discounts to whatever price the revenue chart we were just looking at tells you to ball park. That's how it worked, right?

A. That's how it works, yes.

Q. Okay. So according to this table, if the revenue chart tells you the starting price is [REDACTED], the standard discount is [REDACTED]

A. That's what this chart says.

Q. And you suggested yesterday during questioning with Mr. Hinderaker and again just now that things have really changed on the discounting front?

A. Absolutely.

Q. You talked about how Blaze sales picked up after 2006,

1 so you didn't have to really aggressively discount anymore.

2 That's what you said, right?

3 A. If you are speaking generally across the business that  
4 I talked about, yes, that statement is correct.

5 Q. But at least as of 2019, when you gave your deposition  
6 testimony in this case, it was standard to give a

7 [REDACTED] for an up-front enterprise license?

8 A. It was, yes. That was the questioning that I was  
9 asked.

10 Q. Through 2019 at least, right?

11 A. Oh, I wouldn't say that.

12 Q. But that was your testimony in 2019, right? It was  
13 standard to give a [REDACTED]?

14 A. That was my testimony, but I thought that was in the  
15 context of the period of time for the negotiation for the  
16 Chubb license in 2006.

17 Q. Okay. Let's look at your deposition testimony from  
18 January 16th, 2019.

19 A. Where do I go?

20 Q. We're going to look at page 133.

21 A. I'm sorry. What tab?

22 Q. I think there is a side tab at the front, Mr. Waid,  
23 that says January 16th, 2019.

24 A. I have it. What page?

25 Q. 133. So we're setting the stage. We're in 2019,

1 right?

2 A. That's when this deposition occurred, yes.

3 Q. Okay. And at line 24 you were asked, "So can you  
4 explain to me how discounts are determined when FICO  
5 determines the price to charge for its Blaze software  
6 enterprise licenses?

7 "Answer: [REDACTED]

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 "The [REDACTED], thousands of customer pricings  
14 that have gone out, it's just years of experience. It's  
15 even in Don's PowerPoint deck here, right. He even says  
16 that, you know, this is a bit of an art as much as it is a  
17 science and it just comes from doing deals and knowing what  
18 your competition is and how to incent customers to move.  
19 It's quite expansive and extensive.

20 And you were asked, "So is it standard to give a

21 [REDACTED]?

22 "Answer: For an upfront ELA, yes. "

23 That was your testimony in 2019?

24 A. In the context of an e-mail from 2006, yes.

25 Q. You didn't say that in your answer.

1 A. It's in the deposition.

2 Q. Now, even though the discount table that we're looking  
3 at in the pricing guide stops at [REDACTED], FICO does  
4 offer even higher discounts from time to time, right?

5 A. It has been known to, yeah.

6 Q. And your approval is needed for client discounts that  
7 go over [REDACTED].

8 A. Actually, I need to go above me.

9 Q. But folks at FICO have authority to discount up to even  
10 [REDACTED], right?

11 A. Will Lansing is our CEO. He can discount whatever he  
12 wants.

13 Q. And you've seen discounts often up to [REDACTED],  
14 correct?

15 A. I have, yes.

16 Q. The idea behind the discount is you want to incentivize  
17 the customer to buy that enterprise-wide license, right?

18 A. That was the incentive initiative at the time.

19 THE COURT: Counsel, hang on one moment. Are we  
20 at a point where we could take a break?

21 MS. GODESKY: Mm-hmm.

22 THE COURT: All right. Members of the Jury, we  
23 will take our morning recess. Be back at ten minutes after  
24 11:00.

25 THE CLERK: All rise for the jury.

1 (Jury exits.)

2  
3 (In open court without the Jury present.)

4 THE COURT: You can step down if you want. We  
5 will be back at ten minutes after 11:00.

6 (Recess taken.)

7  
8 (In open court with the Jury present.)

9 THE COURT: Go ahead and be seated. Be seated.

10 BY MS. GODESKY:

11 Q. Welcome back. So we talked about general pricing  
12 guidelines at FICO, and now I want to talk specifically  
13 about the Chubb license.

14 A. Okay.

15 Q. As FICO's corporate representative, you understand that  
16 FICO says the 1.3 million dollar 2006 license that Chubb  
17 purchased limited Blaze use to the Chubb & Son, division of  
18 Federal, right?

19 A. Yes.

20 Q. And it's FICO's position -- and you said yesterday that  
21 you didn't know until 2016 that Blaze was used globally at  
22 Federal affiliates in Canada, Australia and Europe?

23 A. That is correct.

24 Q. And you also understand that it's Chubb's position in  
25 this case that the parties agreed and priced back in 2006

1 on a 1.3 million dollar license that would include Federal  
2 and its global affiliates, right?

3 A. That is what you are saying, yes.

4 Q. And you are involved in 2006 discussions about pricing  
5 a global license for Chubb, right?

6 A. I was, yes.

7 Q. And you didn't talk about any of those communications  
8 during your direct examination with Mr. Hinderaker,  
9 correct?

10 A. I did not.

11 Q. Okay. So let's, let's take a look. So there was --  
12 the enterprise-wide license that we're all talking about,  
13 that was finalized, the second amendment was signed at year  
14 end 2006, correct?

15 A. Yeah, December 2006, correct.

16 Q. But there was discussion about the possibility of an  
17 enterprise-wide license deal for Chubb earlier in 2006,  
18 right?

19 A. Yes.

20 Q. So I want to take a look at what's already in evidence  
21 as P330.

22 And this is an e-mail that John Haines to you,  
23 dated April 4, 2006, correct?

24 A. I'm still getting there. You said P330, right?

25 Q. Yes.



1 A. That is the date of the e-mail, yes.

2 Q. And Mr. Haines was your colleague at the time, as you  
3 can see from his signature block at the bottom, right? He  
4 was the Director For Sales For Enterprise Decision  
5 Management Technologies?

6 A. Absolutely.

7 Q. And the title of Mr. Haines's message to you was  
8 "Pricing approval for Chubb ELA," right?

9 A. That is correct.

10 Q. And we all know by now ELA stands for Enterprise  
11 License Agreement, right?

12 A. It does, yes.

13 Q. Let's look at the first two sentences, if we could.

14 Mr. Haines says, "Bill, I want to pass this  
15 pricing by your" -- you -- "for Chubb." Right? "It is for  
16 an ELA and is primarily for budgetary purposes."

17 Do you see that?

18 A. I do.

19 Q. And then he goes on to say, "Chubb Group of Insurance  
20 Companies signed 12.3 billion in policies in 2005, and  
21 based on that we used a .24 (24 percent of 1 percent -  
22 decimal point is hard to see in e-mail) as the basis for  
23 the pricing in the attached." Right?

24 A. That's what it says.

25 Q. And he goes on to say, "10 dev seats and a 30 percent

1 volume discount," right?

2 A. That's what it says.

3 Q. And "dev" is short for development?

4 A. Yes.

5 Q. And you understood this to be a quote for an enterprise  
6 license for the full set of Chubb Group of Insurance  
7 Companies?

8 A. There is an attachment. Just let me look real quick.  
9 Yes, that's correct.

10 Q. And that means the enterprise-wide pricing would be  
11 based on the revenue generated by the entirety of the Chubb  
12 Group of Insurance Companies?

13 A. In this e-mail, this quote, yes, that's correct.

14 Q. That's the proxy being used for the value?

15 A. That is correct, yes.

16 Q. Let's look at the attachment, which is page 3 of the  
17 exhibit. And we can see Mr. Haines's document says at the  
18 top, "Price quote for enterprise licensing by Chubb Group  
19 of Insurance Companies, April 4th, 2006," right?

20 A. Correct.

21 Q. And we can see it's directed to the attention of James  
22 Black at Chubb, right?

23 A. Correct.

24 Q. And then in the middle of the page -- if we go down,  
25 Vanessa -- there is a note that sort of lists all those

1 factors we just looked about that FICO uses to price  
2 enterprises licenses, right?

3 A. It sure does.

4 Q. And then right above the pricing breakdown, it says  
5 something. I want to take a look at what it says. Right  
6 above the grid, it says, "Enterprise deployment" --  
7 development -- no. "Enterprise deployment license is for  
8 unlimited use for all Chubb Insurance group application  
9 development." Do you see that?

10 A. Yes, it does.

11 Q. And then if you look at line 6, the amount for the  
12 license is identified at about 2.9 million.

13 A. Yes. That's correct.

14 Q. And this is consistent with the rules of thumb in the  
15 FICO pricing guide, right?

16 A. Yes. If you turn to the FICO -- sorry. If you turn to  
17 the FICO pricing guide, you will see that that is indeed  
18 our standard pricing for all of Chubb.

19 Q. Right. And he's working off that 12.3 billion dollar  
20 number for the Chubb Group of Insurance Companies?

21 A. Yes. All 12.3, all of Chubb, that is the price.

22 Q. And then if you look at line 7, Mr. Haines's proposal  
23 then applies a 30 percent discount, correct?

24 A. That is what he is suggesting we propose.

25 Q. And 30 percent of that 2.9 million starting point, I've

1 done the math, it's a little over 900,000. Does that sound  
2 right?

3 A. It's essentially right here. It's 923,100.

4 Q. Thank you. And so that means the discounted price that  
5 Mr. Haines is proposing for a global license for the Chubb  
6 Group of Insurance Companies is about 2 million dollars?

7 A. Just a little bit above, but, yes, let's call it  
8 2 million.

9 Q. And you signed off on this pricing proposal for an  
10 enterprise-wide perpetual license for all of global Chubb,  
11 right?

12 A. I did, yes.

13 Q. I want to look at Defendants' Exhibit 14. And this is  
14 not in evidence yet, but I believe there is no objection.

15 Is that correct?

16 MR. HINDERAKER: No objection.

17 MS. GODESKY: Thank you.

18 BY MS. GODESKY:

19 Q. So we're going to take a look at D14. This is your  
20 response to Mr. Haines, right?

21 A. Yep. As I said, I approved it.

22 Q. And you had that one-word response, "Okay."

23 A. Correct.

24 Q. Okay. Now you saw FICO damages expert, Mr. Zoltowski,  
25 testify earlier, right?

1 A. I did, yeah.

2 Q. And he talked about revenue running through computer  
3 applications using Blaze, right?

4 A. He did, yes.

5 Q. And you didn't respond to this e-mail from Mr. Haines  
6 and say, Wait a minute, John, we think the value that Blaze  
7 can bring to the Chubb Group of Insurance Companies could  
8 be billions of dollars. You didn't say that, right? You  
9 said "Okay."

10 A. No. Why would I?

11 Q. And you didn't even say, Wait a minute, John, we have  
12 to factor in the value that we're going to bring to the  
13 Chubb Group of Insurance Companies, and we need to be  
14 asking for tens of millions of dollars. You didn't say  
15 that, right?

16 A. No. I was following the pricing guides.

17 Q. Just, "okay," to the 2.5 million proposal, right?

18 A. 2.95, but, yes, correct.

19 Q. And that felt right for an enterprise perpetual license  
20 for the global Chubb Group of Insurance Companies?

21 A. That is correct. Yes.

22 Q. Now I want to move forward in time a couple of months  
23 to June 2006, and this is a document already in evidence as  
24 P108. This is a June 16th, 2006, e-mail from Mr. Haines to  
25 you, copying Mr. Wachs, right?

1 A. It is.

2 Q. So this is all internal at FICO, correct?

3 A. Yes.

4 Q. And Mr. Haines writes, "Chubb is inquiring again about  
5 an enterprise price, but they want to know if this will  
6 include international." Do you see that?

7 A. I do.

8 Q. Then he says, "I have attached the quote for your  
9 review, but I think if they wanted to do an ELA, then for  
10 this price, we could grant them global rights," correct?

11 A. That's what it says.

12 Q. So it's clear from Mr. Haines's e-mail in June 2006  
13 that you are talking about how to price a global license?

14 A. It is talking about how to globe -- yes.

15 Q. Let's look at page 2 of the exhibit. And here again at  
16 the top, we see price quote for enterprise licensing for  
17 Chubb Group of Insurance Companies, correct?

18 A. Yep.

19 Q. And if we go to page 3 of the exhibit, Vanessa, we can  
20 see that it's the same approximately 2.5 million dollar  
21 quote that we looked at from April, right?

22 A. It is, yes. It's actually the same quote.

23 Q. And so that means Mr. Haines was comfortable proposing  
24 a 2.5 million dollar fee for a global license to the whole  
25 Chubb Group of Insurance Companies?

1 A. This, this quote says that, yes. Correct.

2 Q. And now this time, Mr. Waid, you had a follow-up  
3 question for Mr. Haines?

4 A. I did, yes.

5 Q. Okay. Let's take a look at the e-mail that is already  
6 in evidence as P226.

7 A. I'm there.

8 Q. Great. I want to look at the bottom of the e-mail  
9 chain where you are responding to Mr. Haines.

10 Blow that up, Vanessa. Thank you?

11 So you wrote, "What are the annual revenues." Do  
12 you see that?

13 A. Yes, I do.

14 Q. And then Mr. Haines responded with income numbers from  
15 a press release, publicly available information, right?

16 A. He is indeed giving me the global Chubb, all of Chubb  
17 revenues, yes.

18 Q. And he says, if you look at the third paragraph of  
19 Mr. Haines's message, "Net written premiums in 2005  
20 increased 2 percent to 12.3 billion. Premiums for the  
21 insurance business grew 4 percent, 3 percent in the United  
22 States and 8 percent outside the United States," correct?

23 A. Correct.

24 Q. So no doubt about it, that 12.3 billion dollar revenue  
25 number includes revenues generated from Chubb's global

1 operations, right?

2 A. Agreed.

3 Q. And that's the entirety of the Chubb Group of Insurance  
4 Companies, not just the Chubb & Son division, right?

5 A. Correct.

6 Q. Now I want to look at your response in the next e-mail  
7 up in the chain. You wrote, "This would be a 1.6 million  
8 dollar list price." And then you recommended that FICO go  
9 with 1.6 million with a 20 percent discount, right?

10 A. That's what I wrote, yes.

11 Q. 20 percent of 1.6 million, I will represent to you, is  
12 320,000. Does that sound right?

13 A. Yes, it is correct. Yes.

14 Q. So that meant you were proposing a 1.28 million dollar  
15 global license fee as of mid 2006 for the whole Chubb Group  
16 of Insurance Companies?

17 A. No, I did not. Which ELA is it talking about?

18 Q. But you wrote in response to Mr. Haines's proposal that  
19 you should go with a 1.6 million dollar fee with a 20  
20 percent discount, correct?

21 A. For which ELA?

22 Q. Mr. Waid, is it your testimony that when you suggested  
23 that FICO propose this 1.28 million dollar fee you were not  
24 including the Chubb Group of Insurance Companies?

25 A. The 1.295, it was included. This just says, 1.6 list



price. Which ELA? There is multiple ELA's in discussion right now.

Q. So it's your position -- I just want to make sure I'm clear on your position. It's your testimony that your response here, your reference to the 1.2 million dollar proposal, 1.6 with a 20 percent discount, that was not for a global license. That's your testimony?

A. I -- as I said at the deposition, and I'll say now, I don't recall any of these e-mails. However, there is evidence, circumstantial evidence, in the e-mail themselves why it is not the global price.

Q. So you don't really recall any of this. You don't have a firsthand recollection?

A. Nope, I do not.

Q. And there is nothing in these e-mails with Mr. Haines, where you are responding to his global proposal, where you say anything like, We need to charge separate enterprise fees for each country that might use Blaze. You don't make that proposal, right?

A. Not in any of these e-mails, no.

Q. Now, let's look at Mr. Layden's response. He is reacting to your suggestion that you do a 1.6 million dollar license with a 20 percent discount. And he says, "You are correct. Let's not get greedy," right?

A. That's what he says, yes.

1 Q. Mark Layden was the general manager of the decision  
2 management software business unit, right?

3 A. He was my boss.

4 Q. He was your boss. And he thought that Mr. Haines's  
5 quote of 3 million with a 30 percent discount might be a  
6 little on the greedy side for a global enterprise license  
7 for the Chubb Group of Insurance Companies, right?

8 A. I can't speak to what was in Mr. Layden's head.

9 Q. That's what this e-mail suggests, right?

10 A. No, I don't think it does.

11 Q. There is no suggestion from Mr. Layden here, either,  
12 about breaking this up by individual countries and charging  
13 country specific license fees, right?

14 A. No.

15 Q. He doesn't suggest that?

16 A. No.

17 Q. Let's look at Exhibit P -- I'm sorry. Let's look at  
18 Exhibit D30.

19 This is not in evidence yet, but I believe there  
20 is no objection, if Mr. Hinderaker could confirm.

21 MR. HINDERAKER: No objection, Your Honor.

22 THE COURT: D30 is received.

23 BY MS. GODESKY:

24 Q. Mr. Waid, this is an e-mail from Mr. Haines on the same  
25 chain we were just looking at, right, but this was sent at

1 9:56 a.m. Do you see that?

2 A. Correct.

3 Q. Mr. Haines writes, "More financial data." Do you see  
4 that at the top of his e-mail?

5 A. Correct.

6 Q. And then he pastes some information that looks like it  
7 would have been come from Chubb's 10-K, right?

8 A. Correct.

9 Q. And the information from Mr. Haines shows in the first  
10 line of the financial information that 12.3 billion in net  
11 written premiums for 2005, correct?

12 A. Correct.

13 Q. And so this is undoubtedly a reference to 12.3 billion  
14 dollars in revenue for the entire global Chubb Group of  
15 Insurance Companies. That's what this reflects?

16 A. Correct.

17 Q. And that's clearly what Mr. Haines is working off of  
18 with his proposals, correct?

19 A. Correct.

20 Q. No one on any of these chains did anything to subtract  
21 from that 12.3 billion dollar number revenues earned by  
22 Chubb Australia, right?

23 A. That is correct.

24 Q. No one jumped in and said, Well, we've to carve out  
25 Chubb Canada and Chubb Europe? No one made that proposal,

1 right?

2 A. Proposal or carved those numbers out? I don't  
3 understand the question.

4 Q. No one suggested, Hey, when we're coming up with these  
5 license fee proposals, we need to subtract from that 12.3  
6 billion dollar number revenue earned by Chubb Canada. No  
7 one said that, right?

8 A. Correct.

9 Q. Now, if we could pull up Defendants' Demonstrative 22.

10 This is a summary you've seen, Mr. Waid, of some  
11 terms from Chubb's various Blaze license agreements, right?

12 A. I have seen this before, yes.

13 Q. And we can agree that the first iteration of the  
14 license agreement from June 2006, use of Blaze was limited  
15 to CSI Express, right?

16 A. Correct.

17 Q. And that cost about \$173,000, right?

18 A. That was a negotiated price.

19 Q. And then there was Amendment One that said, okay, now  
20 you can use Blaze in the entire Chubb specialty lines  
21 division, no limit on the number of applications, but  
22 you've got to stay in that division, right?

23 A. That's correct.

24 Q. And that was a perpetual license, forever?

25 A. Correct.

1 Q. And the cost went up to \$350,000?

2 A. That's correct.

3 Q. And then the third box shows where things landed for  
4 the enterprise-wide amendment in December 2006, correct?

5 A. Correct.

6 Q. And we can all agree that the defined scope quantity in  
7 that second amendment was enterprise-wide, correct?

8 A. That was the scope in the contract.

9 Q. And that means, no limitation on the division or number  
10 of applications this time.

11 A. There are limitations in the contract, but  
12 enterprise-wide means all of Chubb & Son, a division of  
13 Federal, yes.

14 Q. It was defined as an enterprise-wide license, right?  
15 We can agree on that. It was an ELA?

16 A. That's what is in the table, yes.

17 Q. And there was no limit on the number of applications?

18 A. That is correct, yes.

19 Q. And the price increased to 1.3 million dollars, right?

20 A. That is correct.

21 Q. And we saw earlier in 2006, you had recommended pricing  
22 the enterprise license for the Chubb Group of Insurance  
23 Companies at 1.6 million plus a 20 percent discount, right?

24 A. I did not propose that.

25 Q. We saw the e-mail where you were proposing 1.6 plus a

1 20 percent discount. We saw that e-mail.

2 A. I did propose that, yes.

3 Q. And we agreed that 1.6 million with a 20 percent  
4 discount is 1.28 million?

5 A. Below this number, yes.

6 Q. Very close to this 1.3 million dollar number, right,  
7 Mr. Waid?

8 A. It is below.

9 Q. And it is your position now, I'm sensing from your  
10 testimony, that this 1.3 million dollar payment only  
11 covered the Chubb & Son, division of Federal, not the  
12 global group of the Chubb -- not the global Chubb Group of  
13 Insurance Companies. That's your position.

14 A. As I told you, I have no recollection of any of this.  
15 I only have the documentation that you have that I have.

16 Q. Okay. Let's look at already in evidence P111. This is  
17 an e-mail from Sally Holt at FICO to you on December 1st,  
18 2006, correct?

19 A. Correct.

20 Q. And according to her signature on the first page, she  
21 is the senior director of sales engineering.

22 A. That is correct.

23 Q. This is a sales engineering report, right?

24 A. That is correct.

25 Q. Basically it's an update from the sales team on where

1 things stand?

2 A. From the engineers in their engagement with the sales  
3 team, correct.

4 Q. Let's look at page 3 of the PDF, and we see an entry  
5 for Chubb Global Enterprise License Agreement, right?

6 A. That is correct.

7 Q. And it says, "Expected value, 1.2 million dollars,"  
8 right?

9 A. That's correct.

10 Q. So the hope was, FICO was expecting as of early  
11 December 2006 to be able to sell a global enterprise  
12 license to Chubb for 1.2 million dollars?

13 A. Incorrect.

14 Q. That's the reference here, right, expected value?

15 A. In the quarter.

16 Q. In the quarter. So it's your testimony, Mr. Waid, that  
17 the idea was that FICO would be collecting 1.2 million  
18 dollars from Chubb just in this quarter?

19 A. Correct.

20 Q. And then --

21 A. Sorry. Additionally.

22 Q. And then more money to come in the future?

23 A. No. She is talking about a contract that would be an  
24 additional 1.2 million dollars.

25 Q. Doesn't say that, right?

1 A. That's the way the report is set up. It's actually to  
2 indicate what we are closing in this quarter.

3 Q. It's entitled Chubb Global ELA Expected Value 1.2,  
4 correct?

5 A. Yeah. That's what it is labeled. Yes, correct.

6 Q. And that number is pretty consistent with what we saw  
7 John Haines pretty clearly proposing in those prior e-mails  
8 for a global license for the Chubb Group of Insurance  
9 Companies, correct?

10 A. I'm sorry. You have to help me with which e-mail  
11 you're referring to, because I haven't seen a 1.2 e-mail so  
12 far.

13 Q. We have seen a lot of e-mails in the 1.2 million dollar  
14 range, right?

15 A. No. I can't say yes to that.

16 Q. Regardless, Mr. Waid, the number that we see on this  
17 sales report, the expected value 1.2 million, we can agree  
18 that that's right in the ball park of the 1.3 million that  
19 Chubb ended up paying with Amendment Two?

20 A. No, I can't agree with that.

21 Q. Okay. Let's look a little lower on the page where  
22 there is an entry on November 30th, 2006. Do you see that?  
23 It says, "Last update."

24 A. I do.

25 Q. "Current status. Pricing sent to Chubb of 1.5 million



1 for global ELA, Blaze Advisor." Do you see that?

2 A. I do.

3 Q. And then if you scroll down a little more, Vanessa,  
4 there is another entry for November 30th, 2006.

5 Do you see that? Are you with me, Mr. Waid?

6 A. I am.

7 Q. And it says, "Moving toward a global ELA," right?

8 A. That's what it says.

9 Q. And then it references Larry. That's Mr. Wachs?

10 A. Yes.

11 Q. "Larry has been working with Chubb to get an ELA  
12 through this year." Do you see that?

13 A. I do.

14 Q. "The total after credit for a global ELA including  
15 COBOL and smart forms was priced at 1.5 million. I need to  
16 get an update on Chubb's response to the proposal."

17 Do you see that?

18 A. I see that.

19 Q. And these numbers in these sales reports, they're a lot  
20 lower than the tens of millions of dollars on the slides  
21 you were walking through with Mr. Hinderaker on your direct  
22 examination, correct?

23 A. Yes.

24 Q. And certainly nowhere near the billions of dollars that  
25 we heard Mr. Zoltowski talking about?

1 A. I think that's obvious to everybody, yes.

2 Q. And when you received this message from Mr. Holt or  
3 Ms. Holt --

4 A. Ms. Holt.

5 Q. There is no record of you responding and saying,  
6 expected value, 1.2 million, we can bring tens of millions  
7 of dollars of value to Chubb, right? You didn't say that.

8 A. No, I did not.

9 Q. And there is nothing in this proposal that talks about  
10 dividing the global enterprise-wide lines into country by  
11 country license fees, right? No one suggested that.

12 A. This is not a proposal. It's a report, but it's not in  
13 the report, that is correct.

14 Q. And there is nothing in the report about excluding  
15 Chubb Canada, Chubb Australia and Chubb Europe.

16 A. Absolutely nothing.

17 Q. And of course we know from that demonstrative we just  
18 looked at that Chubb had already done the single  
19 application thing, right? It had that first initial  
20 license, a few hundred thousand dollars, one application,  
21 right?

22 A. Correct.

23 Q. And so it was now in the position where it wanted to  
24 add it to a few more applications, so you're talking about  
25 enterprise license, right?

1 A. There was the intermediate step of division, but yes,  
2 more.

3 Q. Now one of the reasons -- we can take that down,  
4 Vanessa. Thank you.

5 One of the reasons we're all here for this trial  
6 is FICO says under this Blaze license agreement where Chubb  
7 paid 1.3 million dollars, Chubb Canada could not use the  
8 software, correct?

9 A. Correct.

10 Q. And Mr. Hinderaker made a point of asking you  
11 yesterday, when did you first become aware that Blaze was  
12 used by Chubb outside the United States. Do you remember  
13 that?

14 A. Yeah.

15 Q. And you said, January 2016, Mike Sawyer and Russ  
16 Schreiber made me aware. Do you remember that?

17 A. Correct. Yes.

18 Q. I want to take a look at Defendants' Exhibit 330. This  
19 is not in evidence.

20 This is an e-mail from Isabel Vives, a FICO  
21 employee in Canada, correct?

22 A. Correct.

23 Q. This was sent November 9th, 2015, correct?

24 A. Correct.

25 Q. At this point in fall 2015, FICO had not yet taken the

1 position that Chubb was in breach of the contract because  
2 of the ACE acquisition, correct?

3 A. That's correct.

4 Q. You're copied on this e-mail, correct, Mr. Waid?

5 A. I am, yes.

6 MS. GODESKY: Defendants offer Exhibit D330 into  
7 evidence.

8 THE COURT: D, is it 330?

9 MS. GODESKY: 330, Your Honor.

10 THE COURT: 330 is received.

11 BY MS. GODESKY:

12 Q. I want to take a look at the bottom of page 3 of the  
13 PDF, if we could, Vanessa.

14 This is Ms. Vives at FICO reporting on efforts to  
15 sell Blaze in Canada. That's basically what is happening,  
16 right?

17 A. Hang on a second.

18 MS. GODESKY: Vanessa, let's actually go back to  
19 the first page of Ms. Vives's e-mail, and if you can blow  
20 up the first paragraph.

21 BY MS. GODESKY:

22 Q. She says, "Per instructions, I've reached out to  
23 practically every responsibly sized insurance company in  
24 Canada."

25 A. Yes.

1 Q. "See below for current status on each account."

2 A. I just had to orient myself.

3 Q. Me, too. Let's go to page 3 of the PDF, and we see at  
4 the bottom Chubb?

5 A. Yes.

6 Q. So she has called Chubb Canada as part of her sales  
7 reference, right?

8 A. Technically doesn't say that, but yes, Chubb Canada.

9 Q. There is an entry 10/26, October 26th. "Mike Sawyer  
10 indicates they have enterprise licenses for Blaze  
11 worldwide. They are also a small player in Canada, special  
12 lines."

13 Do you see that?

14 A. I see that, yes.

15 Q. You didn't chime in and say, wait a minute, Isabel,  
16 when we sold Chubb our enterprise license back in 2006, we  
17 carved Chubb Canada out.

18 You didn't say that, right?

19 A. I'm not even sure I read it.

20 Q. Now, on this topic of how much FICO charges for Blaze,  
21 I want to take a look at some of the contracts that FICO  
22 has entered with other companies.

23 A. Okay.

24 Q. I want to start with a Blaze license agreement that  
25 FICO entered with a company called [REDACTED], and this

1 is already in evidence as Defendants' Exhibit 4.

2 Do you know, Mr. Waid, [REDACTED] is a bank  
3 holding company. Does that sound right?

4 A. Yeah.

5 Q. And they were acquired by [REDACTED]?

6 A. Eventually, yes.

7 Q. Okay. We'll just wait for D4 to come up on the screen.

8 No problem.

9 Okay. We have D4, and if you look at the top,  
10 Mr. Waid, this is a copy of the Blaze license agreement  
11 that FICO executed with [REDACTED] in 2005, correct?

12 A. Correct.

13 Q. And I want to look at page 8 where we can see the term.

14 Do you see it says, [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] right?

18 A. Correct.

19 Q. So this is a perpetual license like Chubb's.

20 A. Correct.

21 Q. And then if we could go to page 13 of the document and  
22 look at Exhibit A, we can see that FICO charged [REDACTED]

23 [REDACTED] for a perpetual  
24 enterprise-wide license, correct?

25 A. That is correct.

1 Q. And that covered deployment and development, right?

2 A. Correct.

3 Q. And since this is an enterprise-wide license, you would  
4 have signed off on it.

5 A. I more than signed off it. I negotiated this one. I  
6 will never forget this contract.

7 Q. Does it sound right, Mr. Waid, that [REDACTED] had [REDACTED]  
8 [REDACTED] as of the time you were  
9 negotiating this license?

10 A. It's around the there. It's a long time ago. I don't  
11 remember, but it's around there, I'll concede, [REDACTED].

12 Q. So you will concede that [REDACTED] had about [REDACTED]  
13 [REDACTED], give or take, and FICO sold an  
14 enterprise-wide perpetual deployment and development  
15 license for [REDACTED]?

16 A. In 2005.

17 Q. Okay. Let's move on to 2007. I want to take a look at  
18 a Blaze license agreement that FICO entered with [REDACTED],  
19 and [REDACTED] is a large department store chain that we all  
20 know and love, right?

21 A. Correct.

22 Q. This is Exhibit D284.

23 A. I'm there.

24 Q. Okay. And if we turn to page 6, which is Exhibit B,  
25 you can see if we can blow up that chart, this states that

1 the license is perpetual for development and deployment,  
2 right?

3 A. That's what it says.

4 Q. And the scope is defined as use solely within client's  
5 [REDACTED], right?

6 A. That's what it says, yes.

7 Q. So this is not an enterprise-wide license.

8 A. It is not, no.

9 Q. Right. Let's go to page 5. And if we go to Section  
10 5.4 of Exhibit B on page 9, sorry, do you see there is a  
11 section called Enterprise License Option?

12 A. Correct.

13 Q. So it says, [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 A. Correct.

17 Q. Do you see that?

18 A. Yes.

19 Q. And then if you look at subparagraphs A and B below,  
20 the ultimate total price that [REDACTED] would pay for an  
21 enterprise-wide license if it wanted to convert would be  
22 [REDACTED], right?

23 A. One month after Chubb signed, yes.

24 Q. And does it sound right to you that [REDACTED] had more  
25 than 50 billion dollars in revenue as of this time period?



1 A. Wouldn't surprise me at all.

2 Q. Let's look at Defendants' Exhibit 283, which is a  
3 contract with [REDACTED]

4 Are you with me, Mr. Waid?

5 A. 283, yes.

6 Q. And if we could go to page 13, this is defining the  
7 scope and price of the original agreement with [REDACTED]  
8 right?

9 A. In 2005, yes.

10 Q. It was not an enterprise license. It was limited in  
11 scope, correct?

12 A. Correct.

13 Q. I want to take a look at the addendum to this contract,  
14 which we can find at page 34, and this chart, Mr. Waid,  
15 shows that the license as of March 29th, 2007, had been  
16 expanded to perpetual enterprise-wide, right?

17 A. That is correct.

18 Q. For both development and deployment, correct?

19 A. Correct.

20 Q. And the total price listed at the top right of this  
21 chart is [REDACTED], correct?

22 A. Correct.

23 Q. And then there was a credit to [REDACTED] for prior license  
24 fees that they had already paid.

25 A. Correct.

1 Q. And so the final net license fee for this perpetual  
2 enterprise-wide Blaze license was about [REDACTED]

3 A. Correct.

4 Q. Does it sound right to you that [REDACTED] revenue around  
5 this period of time was about 14 billion?

6 A. It does not.

7 Q. Okay. Let's look at in your binder next to you, I have  
8 a set of 10-Ks. Let's take a look at Defendants'  
9 Exhibit 309.

10 A. Okay.

11 Q. And if you go to page 9.

12 A. Page 9. I'm there.

13 Q. Does that refresh your recollection, Mr. Waid, about

14 [REDACTED] --

15 A. This is worldwide?

16 Q. They had 14 billion dollars in worldwide revenue as of  
17 2006, correct?

18 A. Yes, but this is U. S. grant.

19 Q. What was the revenue for U. S.?

20 A. I don't know.

21 Q. Next I want to look at [REDACTED]. This is Defendants'  
22 Exhibit 293, and [REDACTED] we all know it's a big national  
23 [REDACTED] right?

24 A. Colossal.

25 Q. Colossal. And if we turn to page 17, we can see the

1 summary of this license agreement, and the price for this  
2 Blaze license was [REDACTED], correct?

3 A. It is [REDACTED] yes.

4 Q. And that included unlimited development seats, correct?

5 A. Correct.

6 Q. And it was perpetual and enterprise-wide, correct?

7 A. Correct.

8 Q. And does it sound right that [REDACTED] had tens of billions  
9 of dollars of revenue around this time period?

10 A. [REDACTED] did, yes.

11 MS. GODESKY: And just for clarity of the record,  
12 Your Honor, defendants do offer D293, which is the [REDACTED]  
13 license agreement, and D283, the [REDACTED] agreement in  
14 evidence.

15 MR. HINDERAKER: Subject to your Court's order,  
16 Your Honor.

17 THE COURT: Subject to the Court's order, 283 and  
18 294 are received.

19 MS. GODESKY: I will add 284 for [REDACTED]

20 THE COURT: Same. 284 is received subject to the  
21 Court's limitation.

22 MS. GODESKY: Thank you.

23 BY MS. GODESKY:

24 Q. And then if we could take a look at Defendants'

25 Exhibit 276, which is a license agreement with [REDACTED] the

1 [REDACTED], correct?

2 A. One second: Correct.

3 MS. GODESKY: And defendants offer D276 into  
4 evidence.

5 MR. HINDERAKER: Haven't gotten there yet, but  
6 subject to the same.

7 THE COURT: Subject to the Court's order, D276 is  
8 received.

9 BY MS. GODESKY:

10 Q. And, Mr. Waid, if we look at page 15, we will see our  
11 summary chart of the Blaze license terms, and here we have  
12 an enterprise perpetual deployment and development license  
13 for [REDACTED] on the deployment side and a little over [REDACTED]  
14 on development, correct?

15 A. Correct.

16 Q. Okay. Now I want to take a look at Exhibit D343, and  
17 this is not yet in evidence.

18 This is a February 27th, 2007, e-mail regarding a  
19 [REDACTED] Blaze ELA pricing proposal. Do you see that,  
20 Mr. Waid?

21 A. I see that, yes.

22 Q. And you are copied on this e-mail, correct.

23 A. I am indeed.

24 Q. The e-mail comes from a Ms. Karen Beale, and she is at  
25 FICO?

1 A. She was.

2 Q. And it's sent to Mr. Vincent Gamba at [REDACTED],  
3 right?

4 A. That's what it says.

5 MS. GODESKY: Defendants offer D343.

6 MR. HINDERAKER: No objection.

7 THE COURT: D343 is received.

8 BY MS. GODESKY:

9 Q. Now, the first paragraph of this e-mail says, "FICO is  
10 extending an incentive proposal for a Blaze Advisor ELA at  
11 [REDACTED], to be executed March 26th,  
12 2007."

13 Do you see that?

14 A. Are you on the first page or second page? Where are  
15 you at?

16 Q. I am in the first sentence?

17 A. Correct.

18 Q. And then if you turn to the second page, a little more  
19 than halfway down, there is this header, Incentive Proposal  
20 For Enterprise License, right?

21 A. Correct.

22 Q. And this was an enterprise license for the [REDACTED]  
23 [REDACTED] region?

24 A. That's what it says.

25 Q. And the proposed price was [REDACTED] dollars?

1 A. And that's the proposed price, yes.

2 Q. And that reflected a [REDACTED]

3 [REDACTED], right?

4 A. That's what it says.

5 Q. And you would have approved it because it's a big  
6 discount, right?

7 A. I wouldn't have approved the [REDACTED]. Somebody else  
8 had to do that.

9 Q. Might have been your boss?

10 A. Probably.

11 Q. Okay. And then let's look at another e-mail like this,  
12 which is Defendants' Exhibit D12. You're familiar with the  
13 company [REDACTED], Mr. Waid?

14 A. Yes, I am.

15 Q. It's a credit card company, right?

16 A. They do more than that now, but yes.

17 Q. And this is a March 1st, 2006, e-mail from David  
18 Burgess to [REDACTED] correct?

19 A. David Burgess.

20 Q. And David Burgess is a FICO employee?

21 A. At this time, yes.

22 Q. And he's e-mailing [REDACTED]?

23 A. He is, yes.

24 MS. GODESKY: Defendants offer Exhibit D12 into  
25 evidence.

MR. HINDERAKER: No objection.

THE COURT: D12 is received.

BY MS. GODESKY:

Q. I want to take a look at what Mr. Burgess says. He says, "Our product management team has determined that the Blaze Advisor ELA value for [REDACTED] is a little over 9 million dollars," right?

A. [REDACTED]

Q. [REDACTED]?

A. It says [REDACTED] here.

Q. Thank you. [REDACTED]. And then if you scroll down, there is a proposal for an ELA at [REDACTED].

A. No, that's not correct. The proposal is for [REDACTED]

[REDACTED].

Q. [REDACTED]. That's the proposal.

A. Correct. And then there is credits for what they have already paid, which brings the net due to [REDACTED].

Q. Okay. So this is a proposal for [REDACTED] dollars for an enterprise license for [REDACTED]?

A. In 2006, correct.

Q. Okay.

Now, we can take that down, Vanessa. Thank you.

Mr. Waid, you are quite familiar with your more than 20 years of work at FICO with these contracts that the company enters into for Blaze, right?

1 A. I am, yes.

2 Q. And we've seen that FICO regularly does business with  
3 very large companies?

4 A. We do business with very large companies, yes.

5 Q. You have access to all those contracts that FICO enters  
6 into for Blaze Advisor software, right?

7 A. What do you mean "access"?

8 Q. You have access to a lot of them at work, right?

9 A. I'm not sure I understand the word "access." You mean  
10 can I get to them?

11 Q. Sure.

12 A. Yes, I can get to them.

13 Q. We walked through a few of them, [REDACTED]

14 [REDACTED] and other big companies, right?

15 A. Yes.

16 Q. We've seen the license fees and we've seen the 1.3  
17 million that was charged to Chubb in 2006, right?

18 A. Correct.

19 Q. And I get the sense that you're trying to suggest that  
20 pricing has changed since the mid 2000s when Chubb signed  
21 its Enterprise License Agreement, correct?

22 A. No. I'm saying that discounting has changed.

23 Q. Discounting has changed. So pricing is generally the  
24 same. It's just discounting has changed?

25 A. Yeah. The models have shifted from perpetual to term



1 annual, and we've moved away from ELAs. That's another  
2 change, but the actual model, no, not changed.

3 Q. Okay. Vanessa, if we could pull up the slide deck that  
4 Mr. Waid used with Mr. Hinderaker and go to slide 29.

5 So you walked through this calculation with  
6 Mr. Hinderaker of a hypothetical customer using Blaze in  
7 various computer applications, right?

8 A. Correct. Yes.

9 Q. And the total here is almost 50 million dollars, right?

10 A. It is, yes.

11 Q. And you have access to a lot of Blaze license  
12 agreements at FICO, but you haven't identified any license  
13 agreement with any customer anywhere where they paid 50  
14 million dollars to access Blaze, correct?

15 A. You have to take into the account the years here as  
16 well. Let me do the math real quick. It's easier to do it  
17 on an annual basis, so it would be hard for me to answer  
18 that question.

19 Annually I can answer it off the top of my head,  
20 but this is hard because it's duration.

21 Q. When you walked through your direct examination with  
22 Mr. Hinderaker, you didn't show us any Blaze license  
23 agreements with other customers, right?

24 A. No.

25 Q. You just showed us the hypothetical calculation on page

1 29, correct?

2 A. No. I showed you my standard pricing.

3 Q. Right --

4 A. This is my standard pricing.

5 Q. Your standard pricing on slide 29, 50 million dollars,  
6 correct?

7 A. For these applications at this size with those number  
8 of dev seats for those years, correct, that is standard  
9 pricing.

10 Q. But you were not able to bring a single license  
11 agreement to trial showing a single customer ever paying 50  
12 million dollars to access Blaze, correct?

13 A. No.

14 Q. And you also didn't bring a single contract to trial  
15 showing a customer ever paying 40 million dollars to access  
16 Blaze, correct?

17 A. We did not bring -- the easy answer is no, we did not  
18 bring anything to trial, yes. That's correct.

19 Q. And you don't have a contract you can show the jury  
20 where a customer paid 20 million dollars to access Blaze,  
21 right?

22 A. I don't know about that.

23 Q. But you haven't shown them, correct?

24 A. We have not, no.

25 Q. So let's talk about your standard pricing on slide 29.

1 Let's leave it up, Vanessa.

2 Your standard pricing hypothetical here on the  
3 screen assumes that Blaze is in use in 17 applications,  
4 correct?

5 A. This scenario? Correct, 17.

6 Q. But with your 20 years of experience at FICO, you  
7 cannot identify a single company that ever entered into an  
8 application based license for Blaze for even 15  
9 applications, right? That's never happened.

10 A. That's not true.

11 Q. I want to look at your deposition testimony from April  
12 2nd. And I'm looking at page 77.

13 Are you with me, Mr. Waid?

14 A. I'm there.

15 Q. You were asked at line 3, "Question: Now in section 11  
16 of your declaration," and a declaration is a sworn  
17 statement under penalty of perjury, right?

18 A. Yes. Correct.

19 Q. Okay. "In section 11 of your declaration, you,  
20 Mr. Waid, say, 'To my knowledge, a FICO licensee has never  
21 entered into a license agreement for the use of Blaze  
22 Advisor software on an application basis with 15 separate  
23 applications; is that accurate?"

24 And your answer, "Yes," correct?

25 A. At the time, yes.

1 Q. And that's because as we discussed earlier, generally  
2 when a customer uses Blaze in more than three or four  
3 applications, FICO's practice is to offer an  
4 enterprise-wide license, correct?

5 A. That is correct.

6 Q. And this 49 million dollar number is not only based on  
7 individual licenses for 17 different computer applications.  
8 It also applies annual license fees to each application,  
9 right? That's what you have done with your math.

10 A. That is correct, yes.

11 Q. So your calculation starts with a 3.9 million dollar  
12 fee to use Blaze in a single, very large computer  
13 application for five years, right?

14 A. For five years, correct. Yes.

15 Q. You don't have a contract where a customer ever agreed  
16 to pay almost 4 million dollars to use Blaze for just five  
17 years, correct?

18 A. Actually, I have one for four.

19 Q. You didn't bring that here, right?

20 A. It's not in the trial, no.

21 Q. And then your math goes on. Then it's a separate 2.4  
22 million dollars to use Blaze in a large computer  
23 application, but only for five years, right? That's the  
24 math.

25 A. That's correct.

1 Q. Then another 2.8 million dollar fee for another  
2 separate computer application, only for five years, almost  
3 3 million dollars, correct?

4 A. That's correct.

5 Q. And this math goes on and on, and that's how you get to  
6 this 50 million dollar figure, correct?

7 A. That's our standard pricing, yes.

8 Q. Mr. Waid, almost all of these individual entries on  
9 your chart on slide 29 are higher than the 1.2 million  
10 dollars you suggested FICO charge for an enterprise-wide  
11 perpetual license to use Blaze at Chubb, right?

12 A. I did not say that.

13 Q. We saw your e-mail correspondence with Mr. Haines,  
14 right, where you were all talking about proposing a license  
15 agreement to the Chubb Group of Insurance Companies,  
16 correct?

17 A. The e-mail did not say that it was 1.6 million for the  
18 enterprise group of Chubb.

19 Q. We all saw the e-mail conversations with you and  
20 Mr. Haines and Mr. Layden and you're all talking about  
21 enterprise-wide license for Chubb in the ball park of 1 to  
22 2 million dollars. That was the price, right, not 50  
23 million?

24 A. Which enterprise?

25 Q. These numbers all dwarf the enterprise-wide perpetual

1 licenses that we saw for [REDACTED] and [REDACTED] and [REDACTED] and what  
2 was offered to [REDACTED] and what was offered to  
3 [REDACTED], correct?

4 A. It does, yes.

5 Q. And all of these numbers dwarf the approximately 1  
6 million dollars that we know from Mr. Ghislanzoni that  
7 Chubb paid to access Red Hat Decision Management software  
8 in 2019 and 2020 for the Chubb enterprise, right?

9 A. I can testify to the fact that it's more than a  
10 million. I can't testify to the rest of your statement.

11 Q. And it's a lot more than a million dollars that Chubb  
12 paid for a replacement rules software license, right?

13 A. If that's what you paid, yes. It's a lot more money.

14 MS. GODESKY: Thank you, Mr. Waid. I have no  
15 more questions.

16 THE COURT: Just letting Members of the Jury  
17 know, we'll go until about 12:30.

18 MR. HINDERAKER: All right. Where to begin.

19 REDIRECT EXAMINATION

20 BY MR. HINDERAKER:

21 Q. Mr. Waid, let's begin by, I gave you a binder, and in  
22 that binder is Defendants' Exhibit 172. Let's start there.

23 A. Okay.

24 Q. Thank you. Just trying to grab the date off of this.

25 This is dated July 1, 19 -- 2019.

1 A. Correct.

2 Q. And let's talk about, this is, this is a term license.

3 I'll give you a moment to orient yourself, myself, too.

4 A. It is a term license, yes.

5 Q. And for how many years?

6 A. Five years.

7 Q. And the scope of the use is for what?

8 A. It's for named application.

9 Q. For a named application?

10 A. Correct.

11 Q. One?

12 A. One.

13 Q. And what is the total fee that [REDACTED]

14 [REDACTED]

15 A. The license was [REDACTED]. Total is [REDACTED]

16 Q. [REDACTED], one application for five years, correct?

17 A. Correct. That total doesn't total the full amount of

18 the five years. There is actually another four years of

19 maintenance on here, which is another [REDACTED]

20 [REDACTED]

21 Q. 4.3 million.

22 Your Honor, I offer the Exhibit D172.

23 MS. GODESKY: No objection.

24 THE COURT: D172 is received.

25 BY MR. HINDERAKER:

1 Q. So I didn't catch the total. When you add all the  
2 elements, it was what?

3 A. I'm doing it in my head. It's not the best, not the  
4 best way to do it, but it's about [REDACTED]

5 Q. For the five-year term.

6 A. That could be off.

7 Q. Got it. You were asked --

8 Well, let me go to, let me go to the Exhibit 276,  
9 and I think this is one that you were asked about with

10 [REDACTED]

11 A. Correct.

12 Q. And this, now this, this exhibit is November 11, 2010.

13 A. Correct.

14 Q. And you see that it is a, if you would give me the  
15 scope of use of this agreement, please. I was asking about  
16 the scope of use.

17 A. I'm sorry. Scope of use is enterprise.

18 Q. Thank you. Are you familiar with the negotiations and  
19 the pricing of this license with [REDACTED]?

20 A. I am. Correction. It's enterprise deployment. There  
21 is three named seats for the development.

22 Q. So you were familiar with the pricing of this. You  
23 were part of the pricing of this license agreement?

24 A. I was, yes.

25 Q. Okay. When we are in this time frame of 2010, can you



1 tell us whether there was any discounting involved in this  
2 license agreement?

3 A. Just a [REDACTED] yes.

4 Q. How minor?

5 A. [REDACTED]

6 Q. Okay. And why was the [REDACTED] given in  
7 this context in 2010?

8 A. They probably pushed on the price a little bit, but we  
9 held pretty firm.

10 Q. Always losing my pen. I don't know where it is. There  
11 we go. All right.

12 Let me, let me go to D293.

13 A. Yes. I'm here.

14 Q. And now, this is another one that you were asked  
15 questions about in 2008 now. What was the scope of this  
16 license with [REDACTED]

17 A. This was actually restricted to corporate, the  
18 corporate group of [REDACTED]

19 Q. So not all of [REDACTED]

20 A. Not all, just the corporate support function.

21 Q. Can you give any more background as to what that  
22 application was?

23 A. Yeah. They were, they were providing, like when you  
24 call in prescriptions and you want to get them fulfilled,  
25 sort of drug interactions and facilitating to make sure

1 your prescription is ready when you show up. It was sort  
2 of that automated process that they were using Blaze for.

3 Q. Okay. And you were involved in the pricing of [REDACTED]

4 A. Yes, I was. They are tough negotiators.

5 Q. In your judgment, in your experience, is there anything  
6 inconsistent between the pricing for [REDACTED] given the scope of  
7 use of Blaze Advisor and the pricing models that we have  
8 been talking about in general in this lawsuit?

9 A. None.

10 Q. All consistent?

11 A. All consistent.

12 Q. And I want to go to, for -- if we go to Defendants'  
13 Exhibit 12 for a moment, please. It uses as an example  
14 [REDACTED] of 2006.

15 A. March 2006, yes.

16 Q. Right. And so, the ELA value you testified to on  
17 cross-examination was [REDACTED]?

18 A. At standard price, yes.

19 Q. At standard price. And the proposal of [REDACTED]  
20 [REDACTED], was that a proposal with credit?

21 A. No, that was not with credit. That was before credit.

22 Q. Before credit.

23 A. Mm-hmm (Yes).

24 Q. So that's another [REDACTED]?

25 A. Correct.

1 Q. And in this context, if I could bring you to our own  
2 license agreement and perhaps that defendants' exhibit, do  
3 we have, do we have, whatever it is, D22, that same chart  
4 that was put up by the defendants.

5 If not, we can do it without if it's not easy to  
6 get. How about putting up --

7 Well, let's go to, let's go to our license  
8 agreement, Mr. Waid, the Chubb & Son license agreement.

9 And I asked you, I asked you on my direct  
10 examination a rather general question about pricing, and  
11 Mr. Waid's testimony about pricing being after credit being  
12 incremental additional amount.

13 A. Correct.

14 Q. So I want to now in light of the cross, I want to go  
15 back and do that in a little more detail with respect to  
16 this license agreement that we have.

17 So if we look at the pricing for the original  
18 license agreement, and I'll just do deployment pricing, the  
19 original license agreement was in deployment 173,750.

20 A. Correct.

21 Q. Okay. And then if we go to the Amendment One, and we  
22 see that the price there is \$350,000?

23 A. Correct.

24 Q. But was that \$350,000 additional to FICO?

25 A. It was not. There is a little footnote down here at

the bottom talking about payments of the first one. Since these were so close, we might not have received all of the payment.

Q. Isn't it, the credit --

A. The --

Q. The amount of fee paid for the original named application license was credited against the 350,000.

A. It was, yes.

Q. So the incremental amount to FICO is not 350,000. It's about 173,000.

A. That sounds about right, yes.

Q. And then when we go to the Amendment Number Two, and we see the pricing at 1,300,000, but the incremental, but the additional revenue to FICO wasn't 1,300,000?

A. It was not.

Q. Because why?

A. Because we took 350,000 off of that, and it says right here that the net license fee, the additional amount of money paid at this time was 950,000.

Q. So if we're talking about the incremental revenue to FICO for the Chubb & Son license, the Amendment Two brought in an incremental, an additional amount of revenue of 950,000?

A. That's correct.

Q. Let's go to Plaintiff's Exhibit 111 and then to the

1 second or third page. There we go.

2 And you've explained to us who Sally Holt is in  
3 terms of her role, and this is a form document that you're  
4 familiar with from FICO or not?

5 A. Yeah. We created it.

6 Q. Okay. And when she is saying, and this is -- first  
7 let's put in the time context.

8 This is before Amendment Two is signed.

9 A. That is correct. The original create date was October  
10 12th.

11 Q. And so she is looking at an expected value of 1.2  
12 million, correct?

13 A. That's correct.

14 Q. As you read that internally at FICO, is that an  
15 expected value of an additional 1.2 million of revenue to  
16 FICO?

17 A. That is correct.

18 Q. In contrast to the \$950,000 that was actually paid  
19 under the license agreement?

20 A. That is correct.

21 Q. You were asked about Defendants' Exhibit 4, if you  
22 could find that, please.

23 Let's put this in the time frame of September 30,  
24 2015.

25 A. No. September 30th, 2005.

1 Q. That's what I wrote down, and I misspoke. 2005. You  
2 said you negotiated the deal, and you will never forget it.  
3 I would like you to explain the pricing that was a -- that  
4 was resulting in -- or resulted in this Exhibit 4.

5 A. Yeah. The reason I will never forget this deal. We  
6 had been negotiating with them for some time. We were  
7 talking about at one time an [REDACTED], and  
8 the date of this is actually the last day of our fiscal  
9 year.

10 And I got a phone call from my boss saying we  
11 need some business, where can we get it. I said, well, guy  
12 this guy has offered me [REDACTED] I can take the  
13 deal if you want it. So I called him up about 3:00 or 3:30  
14 in the afternoon. And he said, okay, but you have to get  
15 it done before the football comes on, because I'm watching  
16 my football game.

17 So I will never forget that.

18 Q. Is this an anomaly?

19 A. At this time I wish I could say it was an anomaly, but  
20 we used to grab business a lot back at this time in  
21 history. We switched to reoccurring revenue streams, and  
22 clients don't want to buy right now, they want to buy  
23 later, they buy later. So be it.

24 Q. And let's look at Exhibit 284. What was the scope of  
25 use for 284 for Blaze Advisor?

1 A. In this contract, this one is for use solely with

2 [REDACTED].

3 Q. So not the whole of [REDACTED]?

4 A. This is, this is a group that figures out [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. Okay. Let's go to Exhibit 77, D77, and you were asked  
9 some questions about what in this license agreement is  
10 10.7.

11 And, Mr. Mayleben, could we show page 10 of this  
12 license agreement on the screen. And could you just put  
13 yellow on the 10.7 Assignment, Delegation.

14 You mentioned that it was a long provision.  
15 Every license agreement is individually negotiated.

16 A. They are, yes.

17 Q. What does this Defendants' Exhibit 77 tell you about  
18 the extent of negotiations about paragraph 10.7 here?

19 A. As my reaction showed, it's pretty long. I don't, I  
20 don't recall seeing something quite this long before.  
21 Obviously would have been involved in approving it, but,  
22 yes, it's pretty long.

23 Q. Okay. And let's put up the license agreement between  
24 Chubb & Son and FICO and show paragraph 10.8.

25 Is it fair to say the level of negotiation is

1 quite different?

2 A. Yes. Quite different.

3 Q. You were shown the e-mails of Russ Schreiber and Mike  
4 Sawyer. Russ is commenting about what the license said or  
5 do not say about GWP.

6 With respect to the license agreement in this  
7 case, in your mind, in your judgment, is there any concern  
8 about the reasonableness -- about FICO's reasonableness?

9 A. None.

10 Q. Is there any, is there any, is there any -- what's the  
11 right word -- any ambiguity in the change of circumstances  
12 in your mind from the status of the client at the time of  
13 2006 to the time --

14 A. Not in my mind, no.

15 Q. You were asked about the resolution of that consent or  
16 not consent within a 30-day period. You mentioned that it  
17 was not written into 10.8.

18 A. That's correct. Yes.

19 Q. Let's go back to J001, and can we go to paragraph 9  
20 point -- I'm sorry. Section paragraph 9.2, please, and  
21 then if we can focus in on 9.2A, Uncured Breach.

22 Is that what you had in mind in terms of another  
23 provision of the contract detailing out a 30-day period?

24 A. That's correct. Yes.

25 Q. Now, you were asked about Exhibit 94, which is the



1 proposal from Ms. Pawloski of February 25.

2 A. Correct.

3 Q. 2016. And you were asked whether you had communication  
4 with her afterwards?

5 A. Correct.

6 Q. And did you?

7 A. I did.

8 Q. And what were they?

9 A. Both written and verbal.

10 Q. Let's just do the verbal. We want to stay within the  
11 time frame of -- around or in response to the February 25  
12 proposal.

13 A. Yes. I responded rather quickly, actually setting up a  
14 call, and set her through very specifically why this  
15 proposal was not acceptable to us and actually counter  
16 proposed with an equivalent approach, which was not, was  
17 not taken any further.

18 Q. But you explained to her why, your thinking about her  
19 proposal?

20 A. Correct.

21 Q. Did they propose anything different at that moment?

22 A. She did not.

23 Q. At that time in February of 25 of 2016, did you have  
24 any additional information from Chubb & Son, other than  
25 what was contained in Mr. Hopp's letter earlier and what

1 was contained in that proposal?

2 A. It's hard to hear you.

3 Q. My bad. Do you recall Mr. Hopp's letter to  
4 Mr. Carretta which you just recently looked at, do you  
5 recall -- you recall Tamra Pawloski's e-mail with a  
6 potential proposal.

7 In terms of your involvement, did you have any  
8 information about the intentions of the future use of Blaze  
9 Advisor, other than what was in those communications and  
10 the call you had with her?

11 A. Nothing.

12 Q. Okay. In the call you had with her, did she in any way  
13 modify or change the approach that she presented in that  
14 commercial proposal?

15 A. No.

16 Q. If we can go to Exhibit 91, please.

17 THE COURT: Mr. Hinderaker, we're at 12:30. How  
18 much more do you have?

19 MR. HINDERAKER: I don't know. You know the Mark  
20 Twain saying, if I had more time, I would have wrote a  
21 shorter letter.

22 THE COURT: Right. All right. I think we should  
23 take our lunch break.

24 Okay. Members of the Jury, we'll break for lunch  
25 and be back in at, make it about 1:10. Give yourselves a

1 little bit of time.

2 THE CLERK: All rise for the jury.

3 **(Jury exits.)**

4  
5 **(In open court without the Jury present.)**

6 THE COURT: Go ahead and be seated if you want.  
7 Just your best estimate at this point, Mr. Hinderaker.

8 MR. HINDERAKER: Half hour, 40 minutes.

9 THE COURT: Okay. And, Ms. Godesky, depends on  
10 the redirect, but from what you can tell --

11 MS. GODESKY: Brief.

12 THE COURT: Brief, okay. And who at that point  
13 will we begin with, do you know?

14 MS. GODESKY: Our first witness will be Kevin  
15 Harkin.

16 THE COURT: Okay. Then I will address the  
17 question regarding Mr. Harkin's use of the demonstratives.  
18 I've had a chance to consider it over the time. I'm going  
19 to allow him to use those.

20 MS. GODESKY: Thank you.

21 THE COURT: All right. We will see you at 1:10.

22 MS. GODESKY: And, Your Honor, sorry.

23 THE COURT: Yes.

24 MS. GODESKY: If we have a motion, how would you  
25 like us to handle that?

1 THE COURT: Well, as we discussed, we can argue  
2 it after, after the close of business today. You need not  
3 make a show in front of the jury of moving for the directed  
4 verdict or the judgment. We understand that motion is  
5 coming.

6 MS. GODESKY: So no need even to come up to  
7 side-bar, right?

8 THE COURT: Correct.

9 MS. GODESKY: Okay. Okay. Thank you.

10 THE COURT: Thank you.

11 **(Lunch recess taken.)**

12  
13 1:11 p.m.

14 **IN OPEN COURT**

15 **(JURY PRESENT)**

16 THE COURT: Be seated.

17 Mr. Hinderaker, you may proceed.

18 MR. HINDERAKER: Thank you.

19 BY MR. HINDERAKER:

20 Q. A few more questions. You were asked questions about  
21 the discounting chart in the guidelines, and you mentioned  
22 that it wasn't, the 2003 document was not updated because  
23 the information is now in your sales force automation  
24 system.

25 We don't know what that is. Could you tell us?

1 A. Yes. So the first thing that we did was we actually  
2 created Excel spreadsheets to do the quoting. I mentioned  
3 that earlier. Originally, they went into a software  
4 solution that we, we actually licensed from another third  
5 party, which is, it's a Contact Management System,  
6 essentially put in accounts, people that work at those  
7 accounts or companies, and then you put in opportunities or  
8 we call them sales opportunities.

9 So you create these entries in this system. And  
10 it helps you manage, you know, when you called so and so  
11 and what proposal you sent where, and you attach these  
12 proposals to that registry in the sales force automation  
13 tool. It's something to help the salespeople keep track of  
14 where they're at in their discussions, what's coming next.

15 And it helps management understand what their  
16 pipeline of opportunity looks like.

17 Q. And how is the discounting and pricing guidelines put  
18 into that system?

19 A. Well, originally it was in actually just in the, in the  
20 spreadsheets themselves. And then there's a routing  
21 mechanism for the quote where there's a management chain.  
22 And so the management chain has to check a box and say yes,  
23 I've looked at that, and it's approved.

24 The same thing with contracts. They flow through  
25 that same automation system. So when contracts are

1 written, it flows through, and there's guidelines in there  
2 about what you can and cannot do.

3 So right inside the sales force tool, you cannot  
4 actually enter a discount unless you have check mark  
5 management approval to do so at the discount level.

6 Q. Thank you. And with staying on the theme of discounts,  
7 you were asked, you were asked about discounting at a  
8 40 percent level from your deposition. And your memory was  
9 that the question was in the 2006 time frame.

10 I would like you to go back to -- I'd like you to  
11 go to the transcript of the January 16, 2019, deposition.

12 And if we could put up Exhibit 226, please.

13 Do you have it?

14 A. I have it, yes.

15 Q. Okay. And you have your transcript at page 133,  
16 January 16, 2019, transcript.

17 A. So you don't want P226? You want the transcript?

18 Q. Well, we're going to use both.

19 A. Okay. Sorry. I'm sorry. Which one is it? 1 or 4.

20 Q. January 16, 2019.

21 A. And what page again?

22 Q. 133.

23 A. And I'm there.

24 Q. Okay. If you see at the middle of the page at lines  
25 14, the question is, "If we can then go to Exhibit 226, if

we can then go to 226." Do you see where I'm reading?

A. Yes.

Q. And on the screen, if we can blow up at the bottom, the Plaintiff's Exhibit 226 is also as you see the Deposition Exhibit 226.

A. Yes.

Q. And the date of that, and the date of that email is what, June 16, 2006?

A. Correct.

Q. And the question and answer that you were then presented with, continuing on page 133 and going to around line 19 or 18 or 19 on 134, was that all in the context of this email and 2006 pricing?

A. It was.

Q. And now I'd like to go back to Exhibit 77, please, Defendants' 77.

Thank you.

And I'd like to go to the provision at paragraph 10.7 that we looked at before. And if we can just bring that up. Thank you.

Now I've already asked you this, so it's just to put in context. This is an example of client negotiating provisions of paragraph -- the no assignment provisions of a FICO license agreement.

A. It is.

1 Q. Okay. And over the course of your years, have other  
2 clients negotiated limitations into FICO's protections of  
3 no assignment?

4 A. They have.

5 Q. And the level of negotiations to limit FICO's  
6 protection of the no assignment provision, I assume various  
7 varies from client to client?

8 A. It varies quite significantly, yes.

9 Q. Do you have some clients that don't change FICO  
10 language at all?

11 A. We have a lot of them who do not change FICO language.

12 Q. So the protections that FICO enjoys from its own  
13 version of paragraph 10.8 survives into the written, into  
14 the written license agreement?

15 A. That's correct.

16 Q. Okay. And you've looked at paragraph 10.8 for the  
17 Chubb & Son license with FICO?

18 A. I have.

19 Q. Was there any degree to which they sought to limit  
20 FICO's rights under paragraph 10.8?

21 A. The only edit that they added was the "may not be  
22 unreasonably withheld."

23 Q. And to that extent in your understanding,  
24 paragraph 10.8 of the license agreement in this case has  
25 all of FICO's standard protections?



1 A. Correct.

2 MR. HINDERAKER: No further questions. Thank  
3 you.

4 MS. GODESKY: Nothing further from me, Your  
5 Honor.

6 THE COURT: All right. Thank you, Ms. Godesky.  
7 Mr. Waid, you may step down thank you.

8 THE WITNESS: Judge?

9 MR. HINDERAKER: Your Honor, the plaintiff rests.

10 THE COURT: Very well.

11 MR. HINDERAKER: It's case in chief.

12 THE COURT: Thank you, Mr. Hinderaker.

13 So the plaintiff just rested their case in chief.  
14 We will commence with the defendants' case in chief in just  
15 a second.

16 I'm going to give you one evidentiary  
17 instruction, just so that you have some context for what  
18 you've heard and what you are going to hear. I will or may  
19 have other evidentiary instructions at the close of the  
20 trial.

21 You have heard testimony from Ms. Jandeen Boone,  
22 the FICO lawyer who participated in drafting the 2006  
23 software licensing agreement, and from Mr. Thomas Carretta,  
24 the FICO lawyer who issued the notice of breach of the  
25 license agreement. You will or may hear testimony from

1 Ms. Pamela Lopata, a lawyer from Federal.

2 I'm going to instruct you about what that  
3 testimony does and does not cover.

4 A lawyer, like any witness, may testify regarding  
5 the circumstances and progression of contract negotiations,  
6 the drafts and language proposals that were exchanged  
7 during contract negotiations, and the final language of the  
8 agreement.

9 In addition, a witness, including a lawyer, may  
10 testify regarding the commercial purpose behind provisions  
11 of the agreement. However, no witness, including lawyers,  
12 are permitted to testify about the legal meaning or the  
13 proper interpretation of the license agreement or any of  
14 its provisions.

15 It is you, and you alone, who will decide in this  
16 trial what the language of the license agreement means  
17 based on the evidence that has been admitted during the  
18 trial.

19 Ms. Godesky.

20 MS. GODESKY: Thank you. Defendants call their  
21 first witness, Mr. Kevin Harkin.

22 THE COURT: Come on up, Mr. Harkin. If you will  
23 stop right here and raise your right hand please.

24

25

KEVIN HARKIN - DIRECT

1 KEVIN HARKIN,

2 called on behalf of the defendants, was duly sworn, was  
3 examined and testified as follows:

4 THE WITNESS: I do.

5 THE COURT: Come on up here. Sit down. Speak  
6 into the mic phone and state your full name for the record.

7 THE WITNESS: Kevin Matthew Harkin.

8 DIRECT EXAMINATION

9 BY MS. JANUS:

10 Q. Good afternoon Mr. Harkin.

11 A. Good afternoon.

12 Q. I have given you a binder with some exhibits that we  
13 might reference and the demonstrative slides that we might  
14 look at?

15 What is your current job and who is your  
16 employer?

17 A. I am the chief financial officer for Chubb's  
18 North America operations. My direct employer is the ACE  
19 American Insurance Company.

20 Q. And for how many years have you held that position?

21 A. One.

22 Q. Please give the jury a sense of your roles and  
23 responsibilities as the chief financial officer of Chubb  
24 North America.

25 A. Sure. I do accounting and reporting. I do the

1 financial planning, the budgets, that kind of thing. We  
2 oversee billing and collections, certain aspects of  
3 treasury operations, things like that.

4 Q. What company were you working for as of year end 2015?

5 A. ACE American Insurance Company.

6 Q. And what was your job at ACE at the time ACE acquired  
7 the Chubb Corporation in January 2016?

8 A. I was a senior vice president in our corporate finance  
9 department.

10 Q. What were your responsibilities in that position?

11 A. I was in the Legacy ACE entity. I oversaw our  
12 expenses, our expense allocation process, as well as  
13 certain aspects of budgeting and planning for the ACE  
14 organization.

15 Q. Let's focus on the first two years then after the  
16 acquisition, so 2016 through 2017. Please give us a sense  
17 of your role and responsibilities during that period.

18 A. I oversaw the integration of the Legacy ACE Company and  
19 the Legacy Chubb Company for North America finance in terms  
20 of budgeting and planning and general reporting of our  
21 profit and loss information.

22 Q. And how about the next three-year period. How, if at  
23 all, did your role and responsibilities change from 2018  
24 through 2020.

25 A. The integration focussed more so changed to a business

1 as usual focussed, but I handled the financial planning,  
2 budgeting and forecasting for a subset of the North America  
3 segment.

4 Q. And then let's move to the two years before your  
5 promotion to become the chief financial officer of Chubb  
6 North America.

7 What did your responsibilities look like in 2020,  
8 to 2022?

9 A. I maintained strong elements of the financial budgeting  
10 and planning, but also had financial operations, how we  
11 used data and analytics and just operational efficiencies,  
12 things like that.

13 Q. Where did you go to college and when did you graduate?

14 A. University of Richmond. I graduated in the year 2000.

15 Q. And do you hold any other advanced degrees or  
16 certifications?

17 A. Not currently. I was a Certified Public Accountant  
18 back in my earlier days, but when I left public accounting,  
19 it was voluntarily inactive.

20 Q. Before your involvement in this litigation, had you  
21 ever heard of Blaze?

22 A. No.

23 Q. Let's put up DD005, which is a list of the computer  
24 applications that used Blaze between 2006 and 2016.

25 Have you ever used any of these computer

1 applications in the course of your regular day-to-day work  
2 at Chubb?

3 A. No. No.

4 Q. Let's talk a little bit about the corporate structure  
5 of Chubb.

6 In the course of your work, in the course of the  
7 work you did from 2016 through 2018 on the ACE/Chubb  
8 integration, did you come to have a general familiarity  
9 with the structure and financial operations of the Chubb  
10 Corporation before it was acquired by ACE?

11 A. I did.

12 Q. How was the structure and financial operations of Chubb  
13 Corporation relevant to the work that you did in the  
14 initial two years after the acquisition?

15 A. My role was to integrate the operations of the two  
16 Legacy companies. In order to do so, I had to develop a  
17 pretty strong understanding of how the Legacy Chubb  
18 organization operated so that I could move them forward  
19 into the future integrated state.

20 Q. Let's take a look at DD001, and that is in the packet  
21 that you've got in the front folder of your binder.

22 Do you recognize this chart?

23 A. I do.

24 Q. What is it?

25 A. It is a chart depicting the Federal Insurance Company

1 and some of its direct subsidiaries that Chubb & Son and  
2 Chubb Insurance Company of Europe, Australia, Canada, as  
3 well as a depiction of the Chubb & Son, a division of  
4 Federal, component.

5 Q. What role did the Chubb & Son, division of Federal,  
6 have in Federal's financial operations?

7 A. It was, I would characterize it as a mechanical  
8 efficiency. It was part of the legal entity Federal  
9 Insurance Company, and it served to administer central  
10 functions like payroll and certain vendor expense  
11 relationships, things like that.

12 Q. You mentioned employee payroll. Did the Chubb & Son  
13 division have employees?

14 A. The employees were legally employees of the Federal  
15 Insurance Company, but the Chubb & Son, a division of  
16 Federal, administered the paycheck process to them.

17 Q. So no actual employees of the Chubb & Son, division of  
18 Federal?

19 A. No.

20 Q. Did most of the payments that were made on behalf of  
21 Federal come from the Chubb & Son division?

22 A. For the most part, yes.

23 Q. If the Chubb & Son, division of Federal, was making  
24 payments on behalf of Federal, does that mean that the  
25 Chubb & Son division generated money for the company?

1 A. No, it didn't. It usually had payments that we want  
2 out the door and then allocated out to some of the other  
3 insurance companies it supported. So in a perfect world,  
4 it would have had nothing in it, just an in and out.

5 Q. Did the Chubb & Son, division of Federal, report its  
6 financial results separately or together with Federal?

7 A. Together with Federal.

8 Q. Why is that?

9 A. Because it was legally part of the Federal Insurance  
10 Company.

11 Q. So there would have been nothing else to, nothing  
12 separate to report?

13 A. Nothing separate to report. And again it would have  
14 had nothing in it in an ideal world.

15 Q. Let's shift topics to the Chubb & Son Corporation's  
16 revenue. First I want to get a couple of terms out there,  
17 and some of them we've heard before, but just to be clear  
18 about what we're talking about.

19 How do you define gross written premium or GWP?

20 A. Gross written premium is the amount we charge our  
21 policyholder for issuing an insurance policy.

22 Q. How do you define net written premium or NWP?

23 A. So net written premium would be the gross written  
24 premium less any reinsurance that we purchase. Reinsurance  
25 would be insurance like for an insurance company.



1 Q. Why does Chubb purchase insurance for itself?

2 A. There are a number of reasons why, but one example  
3 would be, if we have a lot of policies in one area, we have  
4 a high risk of a hurricane or something coming through that  
5 area, we want to be able to pay our claims.

6 So we purchase reinsurance to share the risk with  
7 another insurance carrier.

8 Q. And in your role working on the integration of ACE and  
9 Chubb in the 2016 to 2018 time period, did you come to have  
10 a general familiarity with the products that Chubb  
11 Corporation offered and how it generated revenue before it  
12 was acquired by ACE?

13 A. I did.

14 Q. Why was that information relevant to the work you did  
15 on the integration?

16 A. The integration I oversaw had elements of the  
17 financial, budgeting and planning process. In order to  
18 integrate the two companies, I needed to understand the  
19 products and the offerings of the Legacy Chubb  
20 organization.

21 Q. Let's look at Exhibit D355. So that's one of the tabs  
22 in your binder. This is not in evidence, but I do not  
23 believe there is an objection.

24 MS. KLIEBENSTEIN: Correct.

25 THE COURT: Exhibit D355 is received.

REVIN HARRIN - DIRECT

1 BY MS. JANUS:

2 Q. What is this chart?

3 A. This is a chart depicting the Chubb Corporation's net  
4 written premium for the years 2002 to 2014.

5 Q. Where does this information come from?

6 A. This came from the publicly disclosed 10-K filings with  
7 the Securities and Exchange Commission.

8 Q. And did you personally check the information in this  
9 chart to confirm that it's accurate and that it matches the  
10 amounts publicly reported by the Chubb Corporation?

11 A. I did.

12 Q. Let's switch to the demonstrative, DD024.

13 What does this show?

14 A. This is a bar chart depicting the net written premium  
15 figures that we just spoke about.

16 Q. So this graphically depicts the information that's in  
17 D0355?

18 A. Yes.

19 Q. What is the significance of the green bar before --  
20 behind the entry for 2006?

21 A. That is the year the Legacy Chubb Corporation began  
22 using Blaze.

23 Q. What happened to the Chubb Corporation's revenue  
24 between 2002 and 2004?

25 A. Between 2002, 2004, the revenue increased pretty

KEVIN HARRIN - DIRECT

1        meaningfully.

2        Q.    And how would you describe Chubb Corporation's revenue  
3        between 2005 and 2006?

4        A.    It started to dip.

5        Q.    Would you say that there was a growth momentum that  
6        leveled off at that point?

7        A.    I would say so.

8        Q.    What happened to Chubb Corporation's revenue between  
9        2007 and 2014?

10       A.    After 2007, it remained pretty stable.    In 2008  
11       bottomed out, really, in 2009 and started to climb back up  
12       again through 2014.

13       Q.    In terms of the Chubb Corporation's former operating  
14       structure, what was Chubb Commercial Insurance?

15       A.    Chubb Commercial Insurance, also called CCI, was one of  
16       the Legacy Chubb Corporation's operating segments.

17       Q.    And let's take a look at Exhibit D356.

18                This is not yet in evidence, but I do not believe  
19       there is an objection.

20                MS. KLIEBENSTEIN:    That's correct.    For  
21       everything that's in this binder, it's just fine.

22                THE COURT:    Okay.    Thank you, counsel.

23                All those exhibits will be received.

24       BY MS. JANUS:

25       Q.    What is this chart showing us?

1 A. This is a chart showing the net written premium for the  
2 Legacy Chubb CCI or Chubb commercial segment for the years  
3 2002 to 2014.

4 Q. And is this information from public filings as well?

5 A. It is.

6 Q. And did you check the accuracy of this information  
7 yourself?

8 A. I did.

9 Q. Let's switch then to DD025.

10 Sorry, Vanessa, DD25.

11 A. I'm sorry.

12 Q. Thank you.

13 What is this showing us?

14 A. This is a bar chart showing the same net written  
15 premium figures for the Chubb commercial insurance segment  
16 that we just talked about.

17 Q. Can you explain what you're seeing then with net  
18 written premium in the CCI, the commercial line of  
19 business, between 2002 and 2005?

20 A. Yeah. The net written premium grows meaningfully each  
21 year up through 2005.

22 Q. And how about 2006 to 2008?

23 A. 2006, it starts to decline. Bottoms out around 2009,  
24 2010, and then starts to climb back up again through 2014.

25 Q. And we have the green bar again depicting the year that

1 the Blaze license was acquired, correct?

2 A. Correct.

3 Q. What was, in terms of again talking about Chubb  
4 Corporation's former operating structure, what was Chubb  
5 specialty insurance?

6 A. Chubb specialty insurance was another one of the Legacy  
7 Chubb Corporation's operating segments.

8 Q. And it was referred to as CSI at times?

9 A. It was referred to as CSI, yes. It was specialty  
10 products, insurance for people who worked for companies,  
11 directors, officers, professional services like lawyers and  
12 accountants, things like that.

13 Q. Let's look at D357.

14 What does this chart show us?

15 A. This is, this depicts the net written premium for the  
16 Legacy Chubb specialty insurance, CSI, segment for the  
17 years 2002 to 2014.

18 Q. And is the information in this chart from public  
19 filings?

20 A. It is.

21 Q. And did you check the accuracy of the information  
22 yourself?

23 A. I did.

24 Q. Let's look at DD026. What is this showing us?

25 A. This is a bar chart depicting the net written premium

1 figures we just talked about for the Legacy Chubb CSI  
2 segment.

3 Q. And what do you see happening then in the 2002 to 2004  
4 time period?

5 A. The net written premium grew pretty meaningfully during  
6 that period from 2002 up to 2004.

7 Q. And what about then 2005 onward?

8 A. 2005 onward, the net written premium declined each  
9 year, eventually bottomed out in 2012, then slightly  
10 increased over the next two years.

11 Q. In your role as the chief financial officer of Chubb  
12 North America, do you ever have occasion to factor into  
13 your revenue projections and forecasts changes in the  
14 company's technology or internal systems?

15 A. On occasion, yes.

16 Q. Can you give us an example of a time where that came  
17 up?

18 A. Early on in the Legacy Chubb, Legacy ACE integrated  
19 company, we had a personal lines system conversion. It had  
20 an impact to our net written premiums, so we had to factor  
21 that into our plan and budget assumptions for the upcoming  
22 year.

23 Q. And during what years was Blaze, was the Blaze software  
24 removed from Chubb's internal systems?

25 A. The 2019 and 2020 years.

1 Q. Did you have to incorporate the removal of Blaze from  
2 Chubb's systems into the company's revenue projections  
3 during those years or deal with it in any other way?

4 A. No.

5 Q. In your role as chief financial officer of Chubb  
6 North America, have you come to have a general familiarity  
7 with revenue generated by the combined ACE/Chubb entity,  
8 known as Chubb Limited?

9 A. Yes.

10 Q. Let's take a look at D358. What does this chart show?

11 A. This is a chart depicting the net written premium of  
12 the Chubb Limited Company from 2015 to 2021.

13 Q. Same questions as before. Did this come from public  
14 files and did you check the information for accuracy?

15 A. It came from public filings, yes, and I checked the  
16 information for accuracy.

17 Q. Let's take a look at DD027.

18 Thank you, Vanessa.

19 What is this showing us?

20 A. This is a bar chart showing the net written premium  
21 figures for Chubb Limited that we just talked about.

22 Q. What happened to Chubb Limited's -- well, first I will  
23 ask you. Why is the 2015 bar a different color?

24 A. The 2015 net written premium is a pro forma number.

25 The integration of the two companies closed in January of

1 2016. So this shows an as if the two companies were  
2 together during the '15 year.

3 Q. And what happened to Chubb Limited's revenue between  
4 2015 and 2018?

5 A. Revenue decreased starting in 2016. It started to  
6 climb back up through 2018.

7 Q. How would you best describe Chubb Limited's revenue in  
8 and after 2019 when Blaze was removed from Chubb systems?

9 A. The revenue, net written premium, increased from 2019  
10 to 2020, and then increased very meaningfully in 2021.

11 Q. And what was driving that meaningful increase?

12 A. A number of factors, but largely speaking, market  
13 condition changes.

14 Q. Did anyone ever raise with you concerns about how  
15 removing Blaze from the company's technology infrastructure  
16 would impact Chubb's revenues?

17 A. No.

18 Q. So we've talked through a lot of revenue numbers. At  
19 an insurance company, is revenue the same as profit?

20 A. No.

21 Q. Why not?

22 A. Well, we want to -- we pay clients, to our  
23 policyholders, as losses occur. And then we have expenses  
24 in commissions to our agents and brokers, overhead expenses  
25 like salaries for our employees, and our technology costs



KEVIN HARRIN - DIRECT

1 for our systems.

2 Those get deducted from the premium to arrive at  
3 what we call an underwriting profit.

4 Q. In your role as Chubb North America's chief financial  
5 officer, are you familiar with what's driving the company's  
6 ability to make a profit and to generate revenue?

7 A. Yes.

8 Q. How do you have -- how did you come to that knowledge?

9 A. I oversee the financial budgets for the upcoming year  
10 and the ongoing accounting and reporting. In order to  
11 execute and plan for the upcoming year, I need to know what  
12 our drivers are and how the company makes revenue and  
13 profit.

14 Q. Let's take a look at DD015. Have you seen this slide  
15 before?

16 A. I have.

17 Q. And, generally speaking, what does it depict?

18 A. It depicts six different pillars of aspects that drive  
19 revenue and profit for an insurance company.

20 Q. What role does Chubb's reputation, paying claims,  
21 financial management, have in the sales work that Chubb  
22 does?

23 A. It's a pretty critical role in the sales work. When  
24 companies buy insurance, they want to know that their  
25 counterparty will pay the claims when the losses come.

1 They want to know that that company has the financial  
2 stability to be around to pay the claims.

3 And they want to know that they have a strong  
4 working relationship with the agent and brokers who serve  
5 as intermediaries between the two.

6 Q. When ACE and Chubb merged, ACE acquired Chubb, what  
7 name did the resulting company take on?

8 A. The resulting company took on the name Chubb. The  
9 Chubb brand in the marketplace had a very, very strong  
10 reputation, particularly around how well they paid claims.

11 Q. Looking at the sales pillar, you mentioned the agents  
12 and brokers. Can you also comment on the underwriting  
13 aspect as a part of the sales process?

14 A. Mm-hmm. When a company wants to buy insurance, they  
15 will contact, call up an agent and a broker, and then the  
16 agent will contact insurance carriers that they deal with.  
17 Those insurance carriers will then assess the risk that  
18 they're looking to insure.

19 If it's a building, they'll take a look at the  
20 building. If it's a workers' compensation, they will look  
21 at how many employees the company has. And that  
22 underwriter will generate a quote for that company to say  
23 if you want insurance, this is how much it's going to cost.

24 Q. Fair to say, it has a significant role in driving  
25 revenue and profits?

KEVIN HARRIN - DIRECT

1 A. Yes.

2 Q. As the sales pillar does generally?

3 A. As the sales pillar does generally.

4 Q. What about operations? How does that play into revenue  
5 and profits?

6 A. Operations is critical as well in the sense that it  
7 involves our actuarial functions, and our actuaries are the  
8 ones who try to predict the future. When you issue an  
9 insurance policy, you don't always know what claims are  
10 going to come. They're in the future.

11 So the actuaries pull together a lot of  
12 information and data and help the underwriter when they go  
13 generate their price for their quote. And then also once  
14 we issue the policy, they're the ones that kind of assess  
15 our losses and how they think it's going to play out over  
16 the long term.

17 Q. What, finally, what about compliance? How does that  
18 factor into Chubb's revenue and profits?

19 A. The insurance industry is a very heavily regulated  
20 industry, and we want to be able to operate in  
21 jurisdictions around the world. In order to do so, we have  
22 to understand all the local regulations and compliance and  
23 ensure that we are compliant.

24 Q. So you explained earlier in your testimony that for an  
25 insurance company, revenue is not the same as profit. And

1 I'd like to follow up in a little bit more detail on that.

2 Are you familiar with the term "underwriting  
3 profit"?

4 A. I am.

5 Q. What is underwriting profit?

6 A. So underwriting profit would be the amount, we'll call  
7 it, left over once we take our premium and we backed out  
8 all the claims that we've paid and then all the expenses,  
9 whether commissions to an agent or the salary and  
10 technology costs that I was talking about before.

11 Q. And you mentioned specifically commissions. Are those  
12 a significant expense as expenses go?

13 A. They can be, yeah. They, you know, if you issue an  
14 insurance policy for a dollar, typically you pay \$0.15 in  
15 commission.

16 Q. How does Chubb track underwriting profit?

17 A. We track it in a number of different ways. Externally,  
18 we track it at our reportable operating segments, as well  
19 as some of our insurance companies around the world at that  
20 level.

21 Internally, we're a bit more granular we track it  
22 at a line of business level.

23 Q. Does Chubb track underwriting profit for each policy?

24 A. No.

25 Q. Prior to the merger with ACE, did Chubb track

1 underwriting profit for each policy?

2 A. No.

3 Q. We've heard a little bit about combined, the term  
4 "combined ratio." What is a combined ratio?

5 A. So the losses and the expenses that I just spoke about,  
6 they -- the combined ratio is simply a percentage of the  
7 total premium. So if we have a combined ratio of, let's  
8 say, 85 percent, that means for every dollar of premium,  
9 \$0.85 goes out the door for claims or expenses, leaving us  
10 with a profit of \$0.15.

11 Q. And so the combined ratio encompasses both the losses  
12 and the expenses that you were talking about earlier?

13 A. Correct.

14 Q. So how does one get from a combined ratio to an  
15 underwriting profit?

16 A. Sure. Sticking with the same example, if we have a  
17 combined ratio of 85 percent, that means the 15 percent is  
18 our profit. So for an insurance policy of a dollar, we get  
19 \$0.15.

20 Q. What denotes better performance for an insurance  
21 company, a high combined ratio or a low combined ratio?

22 A. Typically the lower combined ratio would indicate a  
23 higher underwriting profit for a company.

24 Q. And when you say "lower," I mean, how would you  
25 characterize a combined ratio in the mid 80s?

1 A. A mid 80 combined ratio is a strong one throughout the  
2 industry. I would consider it to be a low combined ratio.

3 Q. In your role working on the integration of ACE and  
4 Chubb between 2016 and 2018, did you come to have a general  
5 familiarity with the pre-merger combined ratio of the Chubb  
6 Group of Insurance Companies?

7 A. Yes.

8 Q. Why was that information relevant to the work you did  
9 on the integration?

10 A. As I was integrating the operations of the two Legacy  
11 companies, particularly their financial budgeting, I needed  
12 to understand the profitability of the Legacy Chubb  
13 operations.

14 Q. And how did pre-merger Chubb track combined ratio?

15 A. In a similar manner to the post merger Chubb. We had  
16 combined ratios externally at our operating segment, as  
17 well as internally at a line of business level.

18 Q. Let's take a look at D359. And I'll take this in a  
19 chunk. We'll do D359, D360 and D361.

20 What are these charts?

21 A. These are charts depicting the combined ratio of the  
22 Legacy Chubb Corporation, the -- in total, the CCI Chubb  
23 commercial segment of the Legacy Chubb Corporation, and the  
24 Chubb specialty insurance segment of the legacy Chubb  
25 Corporation, for the years 2006 to 2014.

1 Q. And same questions as before. Is this information from  
2 public filings?

3 A. It is.

4 Q. And did you check the accuracy of the information?

5 A. I did.

6 Q. Let's look at DD028. What is this chart showing us?

7 A. This is a bar chart showing the combined ratio figures  
8 that we just spoke about. The CCI Chubb commercial  
9 insurance segment, the Chubb specialty insurance segment  
10 and the total Chubb combined ratios.

11 Q. So if we look -- well, first I'll ask, I see there  
12 isn't an entry for 2015. Why is that?

13 A. The Legacy Chubb Corporation ceased to exist in January  
14 of 2016 when it merged with the ACE entity, so they did not  
15 file a 10-K for the 2015-year.

16 Q. And if we look first at the CCI combined ratios, they  
17 range from, it looks like, 83 percent to 99 percent. Does  
18 that look right to you?

19 A. Yes.

20 Q. And is there, does that strike you as relatively  
21 typical?

22 A. Yeah. The combined ratio may move a little bit in any  
23 given year if there's a big hurricane or something that  
24 causes a lot of loss, but for the most part over that  
25 period it stayed within that range of the low 80s to the

1 high 90s.

2 Q. And same question for CSI. It looks like a range of  
3 about 77 percent to 91 percent, with seven of the nine  
4 years in the chart in the 80s. Is that, same question,  
5 relatively typical to you?

6 A. It does. Same general principle. You might get some  
7 fluctuation in any given year if there are a number of  
8 shareholder lawsuits or something like that, but the range  
9 kind of is reasonable and what I would expect to see.

10 Q. Are you familiar with the combined ratio for the Chubb  
11 Group of Companies since the merger?

12 A. Yes.

13 Q. How does post merger Chubb track combined ratio?

14 A. Externally, we track it by our defined operating  
15 segments, as well as our local statutory entities around  
16 the world. Internally, we track it at a line of business  
17 level.

18 Q. Let's look at D362. What is this?

19 A. This is a chart depicting the Chubb Limited combined  
20 ratio for the years 2015 through 2020.

21 Q. And is the information in this chart from public  
22 filings?

23 A. It is.

24 Q. And you checked the accuracy of the numbers?

25 A. I did.



1 Q. Let's look at DD029. What is this chart?

2 A. This is a bar chart depicting the combined ratios that  
3 we just talked about.

4 Q. And the chart reflects a combined ratio for the Chubb  
5 Group of Companies that is between 88.7 and 96 percent; is  
6 that right?

7 A. Correct.

8 Q. Again, relatively typical?

9 A. Typical. The range is a little bit higher. It's in  
10 the high 80s up until the high and mid 90s for the total  
11 Chubb Corporation.

12 Q. And this chart doesn't have the break out for CCI and  
13 CSI. Why is that?

14 A. Post integration, Chubb stopped tracking the results  
15 for those segments at that level. We redefined. We  
16 focussed more on geography, as opposed to a worldwide view.

17 Q. Great.

18 Well, thank you very much, Mr. Harkin. Those are  
19 all my questions.

20 THE COURT: Ms. Kliebenstein.

21 CROSS-EXAMINATION

22 BY MS. KLIEBENSTEIN:

23 Q. Hi, Mr. Harkin.

24 A. Hello.

25 Q. It's been four years. Good to see you. Just let me

1 get set up for a second here.

2 It looks worse than it is. Maybe just put it  
3 right down on the floor next to you.

4 Yeah. And I believe you have a copy of your  
5 deposition transcript up there? Perfect. So that  
6 transcript is dated March 21st, 2019, where you and I met  
7 for a long day over financials years and years ago.

8 All right. Let's get to it. So where to start?

9 Mr. Harkin, you just, you just mentioned several  
10 pillars of profits, if you recall that.

11 A. Mm-hmm.

12 Q. And then one of them was about reputation. Do you  
13 know, and is it your position that the reputation of Chubb  
14 Limited, of Chubb, drives revenue for the company?

15 A. I would say it's a factor.

16 Q. It's a factor. Do you know what percentage it plays in  
17 the driving of revenue or profits at Chubb?

18 A. I don't know of an exact percentage. I would say the  
19 pillars all contribute in a meaningful way. I don't know  
20 the exact percentage of reputation, but it's a critical  
21 factor.

22 Q. And so would you say the same thing about all of the  
23 other pillars you mentioned, the paying of the claims, the  
24 operations, the compliance? That's all I can remember.

25 A. The underwriting and --

1 Q. And the underwriting.

2 A. I would say they are all important.

3 Q. Okay. They are all important. Can't pinpoint a  
4 specific amount or a percentage that they contribute to the  
5 revenue?

6 A. Not a percentage necessarily, no.

7 Q. Okay. And who, if you had to name your top five  
8 competitors, who would you name?

9 A. It would be my own editorial. I think you get a  
10 different answer depending on who you ask, but some  
11 competitors that we see in the U.S., right market, would be  
12 different. Travelers Insurance Company, AIG Insurance  
13 Company, those are two.

14 When you go more globally, an Allianz or a  
15 Zurich, you know, and probably a whole handful of others as  
16 you go down the line.

17 Q. And you also mentioned compliance. I know the  
18 insurance industry is highly regulated. I know there's a  
19 significant amount of financial reporting that's required  
20 at the state level, at the national level. Would you agree  
21 with that?

22 A. That, yes, I would agree. It's heavily regulated at the  
23 state level and the national level.

24 Q. And if you didn't comply with those regulations in that  
25 financial reporting, you wouldn't be in business at all?

1 A. That's a severity of noncompliance, yeah. They could  
2 in fact pull your license.

3 Q. And that's the same for Travelers, AIG, Allianz,  
4 correct?

5 A. It's the same for everyone who operates an insurance  
6 company in those jurisdictions.

7 Q. And those three, those three competitors, Travelers,  
8 AIG, Allianz, I'm pretty sure everyone in this room has  
9 probably heard of them. Would you agree that they're  
10 reputation is probably an important part of their company  
11 too?

12 A. I would agree everyone's insurance carrier is an  
13 important part.

14 Q. It's just that type of industry, right?

15 A. It's that type of industry.

16 Q. And your -- when we last spoke in 2019, obviously you  
17 were in the finance department. Is that the department  
18 that you would call it?

19 A. Yeah.

20 Q. And in the finance department, you are not doing  
21 underwriting?

22 A. That's correct.

23 Q. And you are not talking with agents about insurance  
24 projects; is that correct?

25 A. That's correct.

1 Q. And you are not directly selling insurance, correct?

2 A. That's correct.

3 Q. Okay. Now in your direct exam, you went through  
4 several tables with the combined ratio and the revenues.  
5 And I just wanted to go through those and see if we could  
6 link up what was happening in the market at the same time  
7 those ratios and those revenues were changing, if we could.

8 Mr. Mayleben, can we pull up, let's pull up,  
9 well, let me, let's pull up P1177, please.

10 And is that showing to the jury, Your Honor?

11 THE COURT: It is.

12 MS. KLIEBENSTEIN: Okay.

13 BY MS. KLIEBENSTEIN:

14 Q. We've got a couple of exhibits we're going to go  
15 through here 1177, 1178 and 1179.

16 Ms. Janus, can you confirm there is no objection?

17 THE COURT: Any objection?

18 MS. JANUS: No objection.

19 THE COURT: All right. Those will be received,  
20 if you used.

21 BY MS. KLIEBENSTEIN:

22 Q. So I took the charts from the defendants, and I just  
23 kind of combined things so that we could all be looking at  
24 all of the information in one chart.

25 And so in this chart I've put the CSI, the

1 specialty insurance, on the left-hand side. And then I  
2 have CCI commercial next to it. And then I filled in the  
3 blank with the personal lines that total up to the Chubb  
4 Corp.

5 Do you agree with my 10,000-foot description of  
6 this document?

7 A. I would say there's probably some nuances, but it's  
8 materially correct.

9 Q. Okay. So the first three columns should add up to the  
10 fourth, right?

11 A. They should, largely speaking.

12 Q. Largely speaking.

13 And so the personal lines, and we really haven't  
14 talked about that a lot in this lawsuit, but I think it's  
15 material to looking at what's going on with the whole  
16 company.

17 Mr. Mayleben, can you pull up D196, which is the  
18 2004 annual report. And can you scroll over to page 12.  
19 Thank you. I don't have reading glasses. Apparently I  
20 need them.

21 So in this annual report Chubb Corp. is talking  
22 about the personal lines. And in this annual report they  
23 characterize the personal lines as, "Our premier personal  
24 lines product Masterpiece covers homes, cars, boats,  
25 valuable possessions and collections and personal

1 liability. Chubb is also a leading worldwide specialist  
2 insurer of jewelry, fine arts and other collectables and  
3 can provide policies designed specifically for vacation  
4 homes, city homes, antique and collector vehicles, yachts,  
5 family office and family protection, including kidnap and  
6 ransom."

7 Is that an accurate description of the personal  
8 lines as they existed at Chubb Corp.?

9 A. It is.

10 Q. Mr. Mayleben, can you go back to P1177, please.

11 And I see back in 2004 the personal lines were  
12 about 2.8 million out of the 12 million total. Would you  
13 agree with that?

14 A. Per this chart, yes.

15 Q. The other thing I also wanted to drill down on is, I  
16 see between 2004 and 2005 in the specialty lines, do you  
17 see that where it goes from 4.6?

18 Mr. Mayleben, if you could highlight that.

19 To 3.0?

20 A. Mm-hmm.

21 Q. I did the back-of-the-napkin math, and that's about a  
22 34 percent drop between those two years. Would you agree  
23 with that math?

24 A. I would say it sounds right. I don't have a calculator  
25 unfortunately, but --

1 Q. And there it is. So a 30 percent -- 34, 34.7 percent  
2 drop in the CSI Chubb specialty line in one year.

3 Mr. Harkin, do you recall when, when the license  
4 agreement with FICO was executed by, with Chubb & Son?

5 A. 2006.

6 Q. Correct, in early 2006. So let's scroll back out.

7 One other question. Do you know when the, all of  
8 the applications at issue were installed in the various --  
9 when Blaze Advisor was installed in the various  
10 applications that you looked at in your first  
11 demonstrative?

12 A. No.

13 Q. No? So you don't know if they were all in 2006 or  
14 spread out?

15 A. I don't know the answer to that.

16 Q. Okay. Let's scroll back out, Mr. Mayleben, if we  
17 could.

18 So let's focus in on 2007 in particular. I think  
19 that's the start of when you said things started to  
20 plateau. So I just wanted to drill down into that.

21 I see in 2007 compared to the year before, you  
22 know, everything looks, everything looks kind of flat.

23 So if we can go into D199, which is the 2007  
24 annual report and move to page 4, please. And you can see  
25 a copy of this, Mr. Harkin, in your box, if you care to



1 look or you can look on the screen. It's in the -- they're  
2 in folders in your box.

3 A. Okay.

4 Q. Right next to you.

5 A. Oh, in my box here. Yeah. There's a lot of folders in  
6 the box here. I might just look on the screen.

7 Q. I don't want to deprive you of the opportunity to flip  
8 through paper, but that's fine too. If you ever have a  
9 question just pop in the box.

10 A. Sure.

11 Q. Here we are on page 4, and it says for 2007 the  
12 combined loss and expense ratio -- I'll wait for you.

13 A. Thanks.

14 Q. On page 4 it says, "The combined loss and expense ratio  
15 for 2007 improved to 82.9 percent from 84.2 percent in  
16 2006."

17 A. Mm-hmm.

18 Q. And, Mr. Mayleben, if you could scroll out, please.  
19 Thank you.

20 And then I see, then I see above that in the  
21 paragraph that starts "Net premium"?

22 A. Mm-hmm.

23 Q. It says, "The net premiums declined one percent  
24 reflecting the impact of the transfer of our outgoing  
25 reinsurance business to Harbor Point."

1 A. Mm-hmm.

2 Q. And so that would be a large event that affected  
3 revenues, correct?

4 A. It would.

5 Q. Okay. And then down a couple more paragraphs,  
6 Mr. Mayleben, if you could scroll out, there it was. Yep.

7 Catastrophe. "Catastrophe losses in 2007  
8 accounted for three percentage points of the combined  
9 ratio."

10 You mentioned earlier hurricanes, storms and the  
11 like, how does that impact the revenues of a company like  
12 Chubb Limited?

13 A. The storms wouldn't have a direct impact on the revenue  
14 per se.

15 Q. That's a fair point. They have an impact on the  
16 profit, don't they?

17 A. Correct.

18 Q. Correct. Because when a storm happens, people make  
19 claims, and you have to pay them out. So the combined  
20 ratio may fluctuate as a result of that.

21 A. Yeah.

22 Q. Okay. All right. Fair point.

23 And if we move back to D199-065, there's a bunch  
24 of numbers on these papers, but it should be tabbed in your  
25 document. Oh, no, no. No. Same exhibit.

1 A. D199-65.

2 Q. On the very bottom.

3 A. Got a bunch of ones that start with P.

4 THE COURT: It's on the screen.

5 THE WITNESS: It's on the screen. Got it. It  
6 just came up.

7 BY MS. KLIEBENSTEIN:

8 Q. It's on the screen. And I see kind of in the middle of  
9 the third paragraph down, the last sentence in that  
10 paragraph I see in this annual report Chubb Corp. wrote,  
11 "In line with our strategy in recent years of directing our  
12 focus to small and middle market publicly traded and  
13 private held companies, the percentage of our book of  
14 business represented by large public companies has  
15 continued to decrease."

16 Do you see that?

17 A. I do.

18 Q. Do you have any reason to disagree with that statement?

19 A. I do not.

20 Q. Mr. Mayleben, if we could move to P1178.

21 And these are the combined ratios put together  
22 for the various years from 2006 to 2014, correct?

23 A. Yes.

24 Q. And just so I make triple sure I have it right, the  
25 profit of the company is basically 100 minus whatever this

1 number is, so 100 minus 87.5 which would be 12 and a half?

2 A. Yes, that would be the profit margin.

3 Q. Okay. So it is of an inverse way to look at the  
4 profits. So the lower the number, the better the profit?

5 A. The lower the combined ratio, the better the profit.

6 Q. Correct. Correct.

7 So looking at the CSI combined ratio, in 2006 I  
8 see it's 87.5. And then in 2007, I see that it's 77.4. So  
9 it's almost a 10 percent improvement in profitability in  
10 that business unit over one year, correct?

11 A. Correct.

12 Q. And then we were just talking about the catastrophe  
13 losses in 2007. You know what. I think we'll get to a  
14 better example when Superstorm Sandy comes up. So we will,  
15 we will move on from that point.

16 Okay. Marching forward, 2008. This looks like a  
17 rougher year than the years before when it comes to  
18 profitability, would you agree?

19 A. The combined ratio is higher than the years preceding  
20 it yes.

21 Q. So less profitable in 2008.

22 And, Mr. Mayleben, if we could switch over to  
23 1177.

24 If we look at the revenues for 2008, juxtaposed;  
25 to 2007, the revenues are just a tiny bit lower, the total

1 revenues on the right-hand side. I see 11.8 million in  
2 2007 and 11.7 million in 2008. Do you see that?

3 A. Billion, but yes.

4 Q. Apologies. Billion.

5 So the revenues were consistent that year, but  
6 the profit margin was a lot lower, correct?

7 A. Correct.

8 Q. And I think I can guess what was happening in 2008, but  
9 let's go to -- let's go to Exhibit D200, which is the 2008  
10 annual report. And let's go to page 3.

11 And I see that Chubb Corp. wrote, "I'm happy to  
12 report that Chubb effectively navigated the most turbulent  
13 global financial markets experienced since the Depression,  
14 achieving 2008 results that were the third best in the  
15 corporation's history."

16 Do you agree with that statement?

17 A. I would have to -- I don't have an opinion without much  
18 more context than that line.

19 Q. And can we move to page 4?

20 And so the combined loss in ratio was 88.7, but  
21 then I see just below that, catastrophe losses, including  
22 those attributable to Hurricane Ike, accounted for 5.1  
23 percentage points of the combined ratio in 2008.

24 Do you agree with that statement?

25 A. Yes.

1 Q. And catastrophe losses, do those affect the commercial  
2 lines or the specialty lines more?

3 A. Those would more affect the commercial lines where  
4 there's property damage.

5 Q. And so I see in 2008 the CCI combined ratio is 93.9, up  
6 from the year before. Do you agree with that statement?

7 A. Yes.

8 Q. And then let's skip forward to 2010, during the period  
9 when you said the revenues were still bottoming out.

10 If we could go to D202, the 2010 annual report,  
11 please. And let's scroll over to page 3.

12 And I see that net premiums, net premiums were up  
13 one percent. And then moving forward to page 4, I see that  
14 CCI, the net written premiums were basically unchanged,  
15 including a 5.4 percent of impact of catastrophes. And I  
16 think we can see what those catastrophes were if we go to  
17 page 5.

18 And so in that year we had a benign hurricane  
19 season, but we had heavy catastrophe losses from winter  
20 storms in the mid-Atlantic and northeast regions of the  
21 United States and a Chilean earthquake in the first quarter  
22 and from hailstorms in Oklahoma in the second quarter."

23 And these catastrophes that happened, weather,  
24 earthquakes, what else is included in a catastrophe bucket?

25 A. The definition is, we have an agency called ISO that

1 defines a catastrophe, but it could be a severe winter  
2 storm, a hurricane, floods, tornadoes, typically weather  
3 events like that.

4 Q. And those catastrophes materially impact the combined  
5 ratio; is that right?

6 A. They can.

7 Q. They can.

8 Then let's go, let's go to 2013. Well, actually,  
9 no. Let's stick with 2012.

10 Can we look at P1178, please, Mr. Mayleben.

11 So in 2012 we see the combined ratios are all in  
12 the 90s, correct?

13 A. Correct.

14 Q. And we can look at the annual report, but would you  
15 take my representation that Storm Sandy hit that year in  
16 2012?

17 A. I would.

18 Q. And that probably had a material impact on these  
19 numbers, correct?

20 A. I would think it had an impact. I don't know the  
21 materiality of it.

22 Q. Let's move forward to D207, which is the 2015 annual  
23 report.

24 Mr. Harkin, have you seen this document before?

25 A. I have.

1 Q. And it's the Chubb Limited annual report from 2015?

2 A. Correct.

3 Q. Mr. Mayleben, can we look at page 14, please.

4 And on the lower, on the left-hand column in the  
5 lower third, there's a sentence that starts with, "The  
6 Chubb acquisition." And it says, "The Chubb acquisition  
7 brings us so much more capability, including underwriting  
8 knowledge, data and analytical insights, product and  
9 distribution capability, exceptional claims and engineering  
10 services and so many talented seasoned professionals, to  
11 serve in particular the mid size commercial and high net  
12 worth personal lines market in North America through an  
13 expanded agency system that can be leveraged globally."

14 Do you agree with what Chubb Limited wrote about  
15 the acquisition in the 2015 annual report.

16 A. Yeah.

17 Q. Okay. Let's move into 2016 and beyond, if we may.

18 Mr. Mayleben, could we put up P1179.

19 And this is a table that I put together that  
20 combines the net written premium and the combined ratio.  
21 And I see generally on the left-hand side, after 2016,  
22 there's climbing upward, and on the right-hand side, the  
23 combined ratios are ranging from 96 percent in 2020 and 88  
24 in 2016.

25 Do you agree with that?



1 A. Yes.

2 Q. And let's look at, let's start with 2016, the annual  
3 report D208 to see if we can determine what's impacting the  
4 combined ratio and the revenues.

5 If we could go to page 6 and 7. And on page 6 or  
6 7 the annual report writes, "Our underwriting result was  
7 achieved, despite industry experiencing approximately 54  
8 billion in natural catastrophe losses, its sixth costliest  
9 year on record, which was double the prior year's reported  
10 27 billion."

11 Do you agree with that statement?

12 A. I am sure it was true at the time.

13 Q. And if we go to page, I think we're on page 6. There's  
14 a chart that's hiding down there. If we can scroll back  
15 out, Mr. Mayleben.

16 Have you seen this chart before?

17 A. I don't recall it.

18 Q. I believe this is a chart of combined ratio of Chubb  
19 versus its global peers and North American peers. Would  
20 you agree with that?

21 A. Yeah. I can see it, yep.

22 Q. And so for 2016, Chubb's 88 percent combined ratio was  
23 below, was better than, its global peers and certainly its  
24 North American peers. Do you agree with that?

25 A. Yes.

1 Q. So even with the, even with the catastrophe losses,  
2 Chubb Limited was still doing better than its peers?

3 A. Sure.

4 Q. From --

5 A. The losses are industry, so they would affect the peers  
6 as well, but yes.

7 Q. Correct. Correct.

8 And let's go forward to 2017. And on -- I'll  
9 wait and I'll give Mr. Mayleben the exhibit number. D209.  
10 And if we can move to page 7, please.

11 And I see that gross written premiums improved  
12 about four percent. Would you agree with that?

13 A. Yes. Yes.

14 Q. And then on page 9, we had another record or near  
15 record year for worldwide insured natural catastrophe  
16 losses; is that right?

17 A. That's what it says, yep.

18 Q. And if we go to page 10, the table on page 10, it looks  
19 like all of Chubb's peers had a pretty rough year. In fact  
20 they were not profitable at all, correct?

21 A. I can't say all of their peers weren't profitable, but  
22 the -- it looks like this is the average ratio of the  
23 peers.

24 Q. That's a fair point. For the peers that are reflected  
25 in this table, they were above a hundred percent correct?

1 A. The average of them, yes.

2 Q. Okay.

3 A. Some may have been above; some may have been below.

4 Q. Sure. And Chubb was at 94.7 percent for a combined  
5 ratio?

6 A. Yes.

7 Q. And so Chubb did better than its peers in even a year  
8 where there were record or near record worldwide insured  
9 natural catastrophe losses; is that right?

10 A. That's these peers on here, yes.

11 Q. And let's move to 2018. Could we move to page 10 in  
12 this annual report.

13 And, again, we have another chart where Chubb is  
14 at 90.6, and its peers are at 90.2 for a combined ratio,  
15 correct?

16 A. Correct.

17 Q. And so that was another year where Chubb did better,  
18 materially better than its peers as, with regards to its  
19 profits, right?

20 A. Correct.

21 Q. And it's -- would you agree that, you know, revenue is  
22 one thing, but it's profit that matters more than the  
23 revenue, correct?

24 A. I would say it depends on how a company is managed, but  
25 for the most part, profit is more important than revenue.

1 Q. And let's go to D211, which is the 2019 annual report.  
2 And could we go to page 8.

3 And again we have that table, and again Chubb is  
4 doing, if I can do my math, almost 7 percent, but not quite  
5 7 percent, 6.8 percent better on its combined ratio than  
6 its peers, correct?

7 A. Correct.

8 Q. And, Mr. Mayleben, can we go to page 27.

9 And again this is 2019. And the annual report  
10 says, "The net premiums written for North America  
11 commercial P&C insurance increased 7.1 percent from 2018."

12 Do you agree with that statement?

13 A. Yes.

14 Q. And on page 29 it says, "In 2019 net premiums written  
15 in Chubb's middle market and small business division grew  
16 6.1 percent." Do you see that?

17 A. Yes.

18 Q. And then let's move to 2020 in D212, the 2020 annual  
19 report, And let's go to page 8.

20 I'm going to guess what the catastrophe was in  
21 this year, but we'll walk through it. I see at that Chubb  
22 is about 2.8 percent better than its -- better than its  
23 peers on it's combined ratio. Do you see that?

24 A. Yes.

25 Q. But between 2019 and 2020, both the blue line and the

1 orange line we want up; is that right?

2 A. It looks kind of purplish to me, but sure.

3 Q. Thank you. Can we go to page 5, Mr. Mayleben.

4 And what happened in 2020. "Over the last  
5 12 months, Chubb withstood a global pandemic, a recession,  
6 and a record run of natural catastrophes."

7 Is that what led to the, would you call it a  
8 decrease or an increase in combined ratio when the number  
9 goes up in the 90s?

10 A. When the number goes up, the combined ratio increases.

11 Q. Okay. So you would agree with me that between 2019 and  
12 2020 the combined ratio for Chubb increased, right?

13 A. Yes.

14 Q. And would you attribute most of that increase to what's  
15 written here on this page, "The global pandemic, a  
16 recession and a record run of natural catastrophes"?

17 A. They were factors, yes.

18 Q. And I won't ask you how many record runs of natural  
19 catastrophes we can have.

20 All right. Let's move on from that.

21 Mr. Harkin, if you can grab your deposition  
22 transcript, we're just going to run through a couple things  
23 we covered in your depo. And then you also have a binder,  
24 a small binder that has some exhibits we may look at, from  
25 your depo. Correct? From your deposition. You have that?

1 A. Mm-hmm.

2 Q. Okay. So in your deposition we reviewed, we reviewed  
3 some interrogatory responses, and we reviewed some  
4 financials. Do you recall that?

5 A. Yes.

6 Q. And I'd like you to look at Exhibit P404A, which is a  
7 redacted copy. And you'll see on this --

8 Your Honor, this is not in evidence yet, so I  
9 just want to slow down and check that box before we get too  
10 far.

11 So this is Deposition Exhibit Number 407, which  
12 was Plaintiff's Trial Exhibit 404A, which we've redacted  
13 consistent with the ninth supplemental interrogatory  
14 responses.

15 Mr. Harkin, do you recall seeing this at your  
16 deposition?

17 A. Generally, yes.

18 Q. Okay.

19 Your Honor, I move to admit Exhibit P404A.

20 MS. JANUS: No objection.

21 THE COURT: P404A is received.

22 BY MS. KLIEBENSTEIN:

23 Q. And the title of this document is Federal Insurance  
24 Company's Fifth Supplemental Answer to Plaintiff's  
25 Interrogatory Number 16 and Sixth Supplemental Answer to

Plaintiff's Interrogatory Number 17.

Do you see that?

A. I do.

Q. And so this was an interrogatory, a question, from FICO to the defendants. Do you agree with that?

A. Yes.

Q. And the defendants provided answers to FICO, correct?

A. Correct.

Q. And in our deposition we went through these interrogatories to determine where the gross written premium revenue dollars, where they came from, how they were collected. Do you recall that?

A. Yes.

Q. Let's just take the time to look at interrogatory number 16 and number 17.

And I have interrogatory number 16 up on the screen. And it is, it says, "For all insurance policies in connection with which the Blaze Advisor software was used, the gross written premium of defendants and the gross written premium of each related company, including the specific identification of each related company, for each year from 2007 to 2012."

Do you agree with that?

A. Yes.

Q. And then let's go just to level set, let's go to

1 page 10 where it defines interrogatory number 17.

2 And let's blow that up.

3 And interrogatory number 17 is, "For all  
4 insurance policies in connection with which the Blaze  
5 Advisor software was used, the gross written premium of  
6 defendants and the gross written premium of each related  
7 company, including the specific identification of each  
8 related company, for each quarter from March 30th, 2016, to  
9 date."

10 Do you agree with my reading of interrogatory  
11 number 17?

12 A. Yes.

13 Q. So I wanted to spend some time confirming how the  
14 numbers, if we can scroll back out and back to  
15 interrogatory number 16. I just want to take the time to  
16 confirm for the record how the numbers were pulled.

17 Let's go to 16. Perfect. Now move forward one  
18 page, Mr. Mayleben. All right.

19 So on that page, do you see a table titled  
20 DecisionPoint?

21 A. Yes.

22 Q. And in your deposition, I asked you what's your  
23 understanding of the information that's --

24 MS. JANUS: Objection.

25 THE COURT: Sustained. You can ask him the



1 question directly and then impeach him with the deposition,  
2 if need be.

3 MS. KLIEBENSTEIN: We can go that route too.

4 At a 10,000-foot level what is your understanding  
5 of the information that's contained in this first table  
6 titled DecisionPoint, for DecisionPoint?

7 THE WITNESS: It is the gross written premium and  
8 policy count that ran through the DecisionPoint application  
9 and used the Blaze software.

10 BY MS. KLIEBENSTEIN:

11 Q. And scrolling back out and down.

12 For CSI Express, can you tell me, same question,  
13 right, at a 10,000-foot level, what data is reflected in  
14 that table?

15 A. It is the gross written premium and the policy count  
16 for policies that ran through CSI Express and used the  
17 Blaze software.

18 Q. And I'm not, I'm not sure if this is a distinction with  
19 any difference or not, but in your deposition you told me  
20 it is policy count, written premium associated with those  
21 policies and writing companies for the policies that ran  
22 through the automated renewal process and/or -- sorry.

23 Wrong one.

24 Yeah. Okay. CSI Express. I asked you the  
25 second table titled CSI Express Automated Renewal and

1 Profitability Indicator, can you tell me at a 10,000 foot  
2 level what data is reflected in that label.

3 And I think this is what you just said, but I  
4 just want to make sure we're on the same page. It's the  
5 policy count, written premium associated with those  
6 policies and writing companies for the policies that ran  
7 through the Automated Renewal Process and/or Profitability  
8 Indicator for the, that used the Blaze software.

9 Are we saying the same thing?

10 A. Yes.

11 Q. Okay. Perfect.

12 And let's scroll back out and go to the next page  
13 and the next page and the next page.

14 And here we, at the very top, we have Premium  
15 Booking. And I'll ask you -- I'd like the table  
16 highlighted.

17 I'll ask you the same question. At a 10,000-foot  
18 level, can you tell me what data is reflected in this  
19 table?

20 A. It's the policy count and gross written premium that  
21 ran through the premium booking system and used the Blaze  
22 software.

23 Q. And then let's scroll out and go down to CUW-IM.

24 And I'll ask you the same question again. At a  
25 10,000-foot level, what is the data that's shown in this

1 table?

2 A. This is the policy count, written premium and writing  
3 companies for policies that went through CUW-IM and used  
4 the Blaze software.

5 Q. And let's scroll out.

6 And the -- you have this document in front of  
7 you. We also have IRMA and the TAPS applications. Well  
8 actually wait. Just the IRMA, just the IRMA application in  
9 here.

10 If I asked you the same answer or the same  
11 question, at a 10,000-foot level what data is reflected in  
12 this, would you give me the same answer?

13 A. Yes.

14 Q. Okay. Then let's move forward to interrogatory number  
15 17. And in interrogatory number 17 we have, again,  
16 DecisionPoint, CSI Express, CUW-IM, TAPS, IRMA, and Premium  
17 Booking.

18 Do you recall the location of the data center at  
19 which Blaze Advisor was -- Blaze Advisor software was  
20 installed that's used in these applications?

21 A. I don't recall it, no.

22 Q. Is it the Raleigh, North Carolina, data center?

23 A. If that's what I said in the deposition, yeah. I was  
24 prepped for the deposition at that time.

25 Q. And if you want to refresh your recollection, I'm on

1 page 102 and 103 of your deposition. I don't want to put  
2 words in your mouth.

3 A. Raleigh data center, correct.

4 Q. Okay. And we just covered the gathering process for  
5 interrogatory number 16. If I asked you, just so we can  
6 move through this quickly, the same questions for  
7 interrogatory number 17 for the applications DecisionPoint,  
8 CSI Express, Premium Booking, CUW-IM, TAPS and IRMA, could  
9 you tell me at a 10,000-foot level how, what that data  
10 reflects?

11 A. The data reflects the policy count and associated gross  
12 written premium and writing company that ran through the  
13 applications you listed and used the Blaze software.

14 Q. For the policies that ran through the applications and  
15 utilized Blaze Advisor software, correct?

16 A. Correct.

17 Q. Okay. We also talked about Legacy ACE writing  
18 companies in the context of interrogatory number 17. And  
19 if you could move to page 15 of your interrogatory.

20 Do you agree that the writing companies listed in  
21 the middle of the left-hand column, the following are  
22 Legacy ACE Writing Companies: ACE American Insurance Co.,  
23 ACE Fire Underwriters Insurance, ACE Property and Casualty,  
24 Illinois Union Insurance, Indemnity Insurance Co., Pacific  
25 Employers Insurance, Westchester Surplus Sidelines and WFIC

1 for business effective 1/1/11?

2 A. Yes.

3 Q. I want to spend a little bit of time on the expense  
4 information that we looked at in your deposition, if we  
5 could.

6 So in your deposition we look at, we looked at  
7 some spreadsheets that had expenses on them, like claims  
8 losses, commissions and other general expenses in running a  
9 business. Do you agree with that?

10 A. We did look at some schedules that had that information  
11 on it, yes.

12 Q. And I asked you, I asked you about the policies that we  
13 saw in interrogatories number 16 and 17, and particularly  
14 as it related to Premium Booking. For the policies that we  
15 saw in Exhibit 16 and 17, would you agree that it's  
16 extremely difficult, it's very difficult to identify  
17 expenses directly related to the policies we looked at in  
18 interrogatory number 17?

19 A. I would say we don't track or identify expenses at a  
20 policy level.

21 Q. So you would agree it's, it would be impossible,  
22 actually, to identify those expenses under your  
23 recordkeeping?

24 A. Under our recordkeeping, yes.

25 Q. And then we also went through one -- we went through a

1 couple of spreadsheets, but one in particular was  
2 Exhibit 409. And I have a copy if you need your  
3 recollection refreshed.

4 And it was the, it was the expenses for the CSI  
5 and CCI business units from 2016 to 2018. Do you recall  
6 that?

7 A. That was our best estimate of the CSI and CCI business  
8 units. We stopped tracking it at that level beginning in  
9 2016.

10 Q. I've printed out a large copy for our eyes.

11 A. Thank you.

12 Q. Is this the document that we were just referring to?

13 A. Yes.

14 Q. Okay. And it's got a big number on the bottom,  
15 FED017882, and it was Deposition Exhibit Number 409.

16 And can you tell me, what are the dates? What  
17 are the dates on this document?

18 A. The dates are the years in question. So I guess more  
19 specifically what date are you referring to?

20 Q. It spans from 2016 to 2018, correct?

21 A. Correct.

22 Q. Okay. That's what I meant.

23 And can you tell me at a 10,000-foot level, this  
24 data also included data from Canada in it as well; is that  
25 right?

1 A. Yes.

2 Q. And the data in this expense spreadsheet is not  
3 specific to the policies that touch Blaze Advisor that we  
4 looked at in interrogatory 17; is that right?

5 A. Not directly, no.

6 Q. And would you agree with me that this report as its  
7 run, it's not part of your typical reporting processes?

8 A. This is not part of our typical reporting process.

9 Q. And the data that's in here comes from the CCI and the  
10 CSI segments. Is that the right word for you?

11 A. It was our best estimate of what they would look like  
12 given that we changed the way we tracked data after the  
13 acquisition.

14 Q. For CCI and CSI?

15 A. For CCI and CSI.

16 Q. And we saw those acronyms on those combined ratios and  
17 those revenue charts that we just looked at?

18 A. For the 2002 to 2014 years.

19 Q. Yep. Because CSI is the acronym that Chubb Corp. used  
20 to use for its specialty lines?

21 A. Correct.

22 Q. And CCI was the acronym for Chubb Commercial that Chubb  
23 Corp. used to use before the acquisition, right?

24 A. Correct.

25 Q. Okay. And so the policies that we looked at in

1       interrogatory number 17 fell under that, those CSI and CCI  
2       buckets?

3       A.   From the years prior to 2016.

4       Q.   Right.  And the data that's in FED017882, that's from  
5       2016 to the end of 2018.  It doesn't include any Legacy ACE  
6       revenue or expenses in it, right?

7       A.   No.

8       Q.   And there's no way for us to definitively link up the  
9       costs and expenses in that document to the gross written  
10      premiums in interrogatory 17; is that right?

11      A.   That's correct.

12      Q.   And in that cost and expense spreadsheet that you are  
13      refreshing your recollection with, there's premium revenue  
14      that doesn't touch Blaze Advisor, correct?

15      A.   There would be premium in here that potentially does  
16      not touch Blaze Advisor.  It's hard to definitively say.

17      Q.   And then touching on that Legacy ACE issue, going back  
18      to interrogatory number 17 when I had you identify those  
19      writing companies from Legacy ACE, do you recall where you  
20      gathered the policy and the policy information, the policy  
21      count and the revenues, what database you looked at for the  
22      Legacy ACE companies?

23      A.   For what application?  For the CUW-IM?

24      Q.   That's correct.

25      A.   I believe there was a query run up against a -- the



1 C UW-IM application that included an identifier, and that  
2 identifier was then pulled up against a registration  
3 system.

4 Q. I'll ask it a different way. The Legacy ACE data, it  
5 came from a database called Genius Legacy ACE, correct?

6 A. A registration system Genius, yes.

7 Q. And that's not a Legacy Chubb database, correct?

8 A. Correct.

9 Q. And in the context of the spreadsheet, the big  
10 spreadsheet that you are refreshing your recollection with,  
11 we talked about bulk expenses and direct expenses. And  
12 bulk expenses are things like general administrative  
13 expenses, taxes, licenses and fees. Would you agree with  
14 that?

15 A. Yes.

16 Q. And those are tracked at the North American level from  
17 2016 to 2018, correct?

18 A. They're tracked at department levels within  
19 North America.

20 Q. In your deposition you told me the bulk expenses are  
21 tracked in a larger bucket and apportioned to a line of  
22 business. Do you agree with that?

23 A. Yes.

24 Q. And would you agree that these bulk expenses cannot  
25 specifically be linked to an individual policy or premium?

1 A. By and large, yes.

2 Q. With regard to -- you mentioned, you mentioned earlier  
3 that Chubb pays its claims. Did I hear you say that right?

4 A. Chubb pays its claims, yes, when they're valid claims.

5 Q. Pays its what?

6 A. When they're valid claims, yes.

7 Q. When they're valid claims.

8 A. Yes.

9 Q. And when we, when we looked at the expense data, I  
10 recall that there was a line, what was it called, LAE?

11 A. Mm-hmm.

12 Q. Loss adjusted expenses?

13 A. Yes.

14 Q. And that included legal expenses relating to disputed  
15 claims; is that right?

16 A. Among other things, but yes.

17 Q. And do you know what percentage of its claims Chubb  
18 Limited disputes?

19 A. I don't have any -- I wouldn't have an appreciation for  
20 how much they dispute. And you can have legal claims for  
21 or legal costs for non-disputed claims as well.

22 Q. So you don't know what percentage of its claims, of the  
23 claims from the customers that Chubb Limited views as valid  
24 or not valid; is that right?

25 A. I don't have an understanding of the percent of

1 disputes of nonvalid versus valid, no.

2 MS. KLIEBENSTEIN: All right. I don't think I  
3 have any further questions.

4 THE COURT: Ms. Janus, do you ever any further  
5 questions?

6 MS. JANUS: No.

7 THE COURT: All right. Thank you, Mr. Harkin.  
8 You may step down.

9 (Witness excused.)

10 THE COURT: Members of the jury, we'll take our  
11 afternoon break. Be back in the courtroom at quarter after  
12 3:00.

13 THE CLERK: All rise for the jury.

14 (Recess taken)

15 3:15 p.m.

16 **IN OPEN COURT**

17 **(JURY PRESENT)**

18 THE COURT: Be seated.

19 Ms. Godesky, will you call your next witness.

20 MS. GODESKY: Defendants call Pamela Lopata.

21 THE COURT: Ms. Lopata, come on up here and I'll  
22 swear you in.

23 PAMELA LOPATA,

24 called on behalf of the defendants, was duly sworn, was  
25 examined and testified as follows:

PAMELA LOPATA - DIRECT

1 THE COURT: I do. Please be seated.

2 Speak into the microphone and state your full  
3 name for the record.

4 THE WITNESS: My full is Pamela Lopata.

5 DIRECT EXAMINATION

6 BY MS. GODESKY:

7 Q. Good afternoon, Ms. Lopata.

8 A. Good afternoon.

9 Q. What is your current job and who is your employer?

10 A. I am currently managing counsel within the legal  
11 department at Chubb. And my employer is ACE American  
12 Insurance Company.

13 Q. How can you be in the Chubb legal department and be  
14 employed by ACE?

15 A. So the ACE American Insurance Company affiliate within  
16 the Chubb group is the entity that employs me and others  
17 within the organization, runs payroll.

18 Q. Now you said that you are managing counsel. Does that  
19 mean you are a lawyer?

20 A. Yes.

21 Q. Were you employed by Chubb at the time that it was  
22 acquired by ACE?

23 A. Yes.

24 Q. When did you first join Chubb?

25 A. I first joined Chubb in December of 2012.

PAMELA LUPATA - DIRECT

1 Q. Could it be 2011?

2 A. I'm sorry. December of 2011, yes. December of 2011.  
3 I got married in December of 2012.

4 Q. Can you tell the jury about your education?

5 A. Sure. I went to Penn State University for my  
6 undergraduate degree, and then I went to the Catholic  
7 University of America for my JD.

8 Q. And when did you get your JD?

9 A. In 2001.

10 Q. What did you do immediately after law school?

11 A. Immediately after law school, I clerked for the  
12 appellate court in New Jersey.

13 Q. What does it mean to clerk for the appellate court?

14 A. I would review trial transcripts that were on appeal  
15 for cases that were coming up on appeal, and then I would  
16 write briefs for the appellate panel of judges that would  
17 then sit and hear the cases on appeal.

18 Q. What did you do after your clerkship?

19 A. After my clerkship, I joined a law firm by the name of  
20 Budd Larner in New Jersey as a corporate associate.

21 Q. How long did you work there?

22 A. Approximately three or four years.

23 Q. And what did you do next?

24 A. After that I joined another law firm in New Jersey,  
25 Gibbons, as a corporate associate.

1 Q. And then did you join Chubb after that?

2 A. And then I joined Chubb after that.

3 Q. What did your role at Chubb look like between when you  
4 first joined the company in 2011 through the time of the  
5 ACE acquisition in early 2016?

6 A. So I was assistant counsel within the general counsel  
7 department, and one of the areas that I supported was the  
8 global strategic sourcing/procurement area, and they were  
9 responsible for ensuring that we were contracting with  
10 vendors for different services and products that the  
11 company needed.

12 And I would get involved from a legal perspective  
13 to negotiate deals that were over \$500,000 of spend.

14 Q. And when you talk about vendor contracts, do you mean  
15 things like software license agreements?

16 A. Correct. Yeah.

17 THE COURT: Excuse me one second, counsel.

18 Slow down just a little bit.

19 THE WITNESS: Oh, sure. Okay.

20 BY MS. GODESKY:

21 Q. Are you familiar with someone at Chubb named Andrew  
22 Hopp?

23 A. I am, yes.

24 Q. Does he work in the legal department?

25 A. He does.

1 Q. Did he come to the combined ACE Chubb entity from ACE  
2 or from Chubb?

3 A. Andrew was from ACE.

4 Q. In the years before the ACE acquisition, by what  
5 company were you formally employed?

6 A. Federal Insurance Company.

7 Q. If one of the vendors that you work with asked you what  
8 company do you work for in that time period, what would you  
9 say?

10 A. Chubb.

11 Q. Why wouldn't you say Federal?

12 A. Federal didn't have the brand recognition like Chubb  
13 and would not really have indicated that I worked for Chubb  
14 Insurance.

15 Q. I want to put Defendants' Demonstrative 1 on the  
16 screen.

17 Thank you, Vanessa.

18 Ms. Lopata, have you seen this before?

19 A. I have.

20 Q. And what are we looking at here?

21 A. We are looking at an organizational chart of the Legacy  
22 Chubb organization.

23 Q. And we see the Chubb & Son, division of Federal, inside  
24 the box for Federal Insurance Company, correct?

25 A. Correct.

1 Q. What was Chubb & Son's role in the day-to-day  
2 operations of Federal before the ACE acquisition?

3 A. So Chubb & Son was a division of Federal, and it was  
4 the contracting arm of the organization.

5 Q. Was Chubb & Son, a division of Federal, ever an  
6 independent legal entity?

7 A. Never.

8 Q. Did it ever issue any insurance policies?

9 A. Never.

10 Q. Did Chubb & Son, a division of Federal, ever have  
11 employees?

12 A. No.

13 Q. Now, the jury has seen some lists of names of people  
14 who are identified as officers of Chubb & Son. How can  
15 that be true if there are no employees of the Chubb & Son  
16 division?

17 A. So employees of Federal were granted officer titles,  
18 and they were tied to Chubb & Son. I had one, and it was  
19 tied to Chubb & Son. It indicated that you were an officer  
20 within the Chubb organization.

21 Q. Would it surprise you if people outside the legal  
22 department weren't sensitive to the nuances of what it  
23 meant to have an officer title through Chubb & Son?

24 A. No.

25 MR. HINDERAKER: Objection. Leading.



PAMELA LOPATA - DIRECT

1 THE COURT: I did not hear the objection. I'm  
2 sorry.

3 MR. HINDERAKER: I think that's leading, Your  
4 Honor.

5 THE COURT: Sustained.

6 BY MS. GODESKY:

7 Q. Ms. Lopata, in the time period before the ACE  
8 acquisition, how widely understood was this nuance about  
9 why certain people have officer titles through the Chubb &  
10 Son division?

11 A. Within the legal department it was well known. Outside  
12 of the legal department, I wouldn't -- not as well known.

13 Q. Would the Chubb & Son division of Federal itself have  
14 had a use for a software license?

15 A. No.

16 Q. Why not?

17 A. Because Chubb & Son didn't have any employees. It  
18 wasn't a legal entity, and Chubb & Son, a division, would  
19 not have been, would not have had a need for a software, a  
20 software tool.

21 Q. Did Chubb & Son, a division of Federal, ever have any  
22 affiliate companies?

23 A. No.

24 Q. Why not?

25 A. Because Chubb & Son, a division, is not a legal entity.

PAMELA LUPATA - DIRECT

1 It wasn't a legal entity.

2 Q. After you joined Federal in 2011, did you become  
3 familiar with the company's general practices and  
4 procedures for entering vendor contracts?

5 A. Yes.

6 Q. In the course of your work in the legal department, did  
7 you from time to time work with vendor contracts and legal  
8 agreements that were executed before you joined the  
9 company?

10 A. Yes.

11 Q. And in what context would that happen?

12 A. That would have been in the context of amending an  
13 agreement, adding a new statement of work to an agreement,  
14 reviewing an agreement to understand what a party's legal  
15 obligations may be under an agreement, or if a vendor had a  
16 particular service level that it needed to meet in  
17 connection with the services they were providing or the  
18 software tool, I would go back and look at these older  
19 contracts for any of those purposes.

20 Q. Did you also interact with older contracts in the  
21 context of renewals and terminations?

22 A. Yes.

23 Q. Why would that happen?

24 A. In order to take -- I'm sorry. Can you repeat the  
25 question?

1 Q. So you testified that you would sometimes work with  
2 these older contracts in the context of a renewal or  
3 termination. Just explain what you mean by that.

4 A. Oh, sure. If a contract was expiring, but Chubb wanted  
5 to continue with the services, we may have to enter into a  
6 renewal amendment or a renewal addendum or some kind of  
7 documentation to restart the agreement.

8 If Chubb wished to terminate an agreement, we  
9 then would have to review the agreement to draft a  
10 termination letter and understand what our obligations were  
11 in connection with the termination. So that would require  
12 me to have to go back and look at all of the previous  
13 pieces of the contract to make those decisions.

14 Q. How far?

15 MR. HINDERAKER: Excuse me, Your Honor. Could we  
16 have a sidebar?

17 THE COURT: You may.

18 (Sidebar discussion)

19 THE COURT: Go ahead.

20 MR. HINDERAKER: Unfortunately I don't have a  
21 copy of the defendants' witness list with me.

22 THE COURT: Okay.

23 MR. HINDERAKER: But the disclosure from  
24 Ms. Lopata was about corporate structure.

25 THE COURT: Okay.

PAMELA LOPATA - DIRECT

1 MR. HINDERAKER: And this testimony is now going  
2 beyond that into contracts, termination of contracts,  
3 renewals of contracts.

4 MS. GODESKY: I don't want to alarm anyone. I'm  
5 just trying to lay a foundation for the fact that she knows  
6 the general practices and procedures from before 2011 when  
7 she joined the company. That's all I'm trying to  
8 establish.

9 MR. HINDERAKER: It sounds more than that.

10 MS. GODESKY: I'm literally just laying a  
11 foundation.

12 THE COURT: I understand. So for now, at least,  
13 we can revisit it. I'll deny the motion to, or the  
14 request, but go ahead. So go ahead and lay the foundation,  
15 and we'll see where it goes.

16 MS. GODESKY: Okay.

17 THE COURT: And well, that's fine. Okay.

18 (In open court)

19 THE COURT: You need to turn the mic back on  
20 after that.

21 THE WITNESS: Okay.

22 THE COURT: Okay. Go ahead.

23 BY MS. GODESKY:

24 Q. Ms. Lopata, how far back in time do you have a general  
25 understanding of Chubb's practices for executing contracts

PAMELA LUPATA - DIRECT

1 with vendors?

2 A. At least, at least through the early 2000s.

3 Q. Did you ever work with contracts executed in the 1990s  
4 and 80s as well?

5 A. Yes.

6 Q. How many vendor contracts and license agreements did  
7 you work on during your time at Chubb before the ACE  
8 acquisition?

9 A. Hundreds.

10 Q. When you joined Federal in 2011, what was the general  
11 practice in terms of what contracting entity would  
12 typically sign vendor contracts and license agreements for  
13 Federal?

14 A. Chubb & Son, a division of Federal.

15 Q. And approximately when did that policy begin?

16 A. At least, at least the early 2000s, if not prior, to my  
17 understanding.

18 Q. And did that general default practice continue having  
19 the Chubb & Son, division of Federal, sign contracts on  
20 behalf of Federal up until the ACE acquisition?

21 A. Yes.

22 MR. HINDERAKER: Objection. Leading.

23 MS. GODESKY: Why was it the general practice for  
24 the Chubb & Son division to sign contracts on behalf of  
25 Federal?

PAMELA LOPATA - DIRECT

1 MR. HINDERAKER: Also objection. Leading.

2 THE COURT: Overruled.

3 THE WITNESS: Can you repeat the question?

4 BY MS. GODESKY:

5 Q. Sure. Why was it the general practice for the Chubb &  
6 Son division to sign contracts on behalf of Federal?

7 A. Because Chubb & Son was the contracting arm of Federal  
8 Insurance Company, and the Chubb & Son division allowed for  
9 the outside world, the vendors and the providers, to, to  
10 recognize that they were dealing with the Chubb  
11 organization. Federal would not have necessarily allowed  
12 for that.

13 Q. When contracts were signed by the Chubb & Son division,  
14 did Federal take the position internally and externally  
15 that the contract granted Federal rights under the  
16 contract?

17 A. Yes.

18 Q. In the five years that you worked at Federal before the  
19 ACE acquisition, did any company take the position that  
20 Federal did not have rights under a contract because it was  
21 signed by Chubb & Son?

22 A. No.

23 MS. GODESKY: Thank you, Ms. Lopata. No further  
24 questions.

25 THE COURT: Mr. Hinderaker.

MR. HINDERAKER: Yes. Thank you.

CROSS-EXAMINATION

BY MR. HINDERAKER:

Q. Good afternoon.

A. Good afternoon.

Q. We haven't met. My name is Al Hinderaker.

A. Nice to meet you.

Q. I represent -- I am one of the lawyers representing  
FICO.

Let's pull up. Oh, yeah. Sorry.

This is some of the documents I will be asking  
you about.

A. Okay.

Q. In your, in the binder of materials that I have just  
given to you is what's called an exhibit called J001.

A. Okay.

Q. And if you would go to that first, please. And I just  
want to see if we can agree to a few things.

This happens to be the license agreement between  
FICO.

And if we could blow that up.

The client in this license agreement is defined  
as Chubb & Son, a division of Federal Insurance Company.

Do we agree?

A. Yes. It says, "Client."

1 Q. Yes. And then if we go to the last, not the last page,  
2 but it's -- if you look at the top right-hand corner, it's  
3 10 of 17.

4 A. I'm sorry. Which page?

5 Q. 10 of 17. And that's 10 of 17.

6 One earlier, Mr. Mayleben.

7 A. I see 10 of 16.

8 Q. Look at the screen. That's the document. That's the  
9 page I want.

10 MS. GODESKY: I think we have a different -- I  
11 think we have a different document, Mr. Hinderaker, because  
12 I don't have those numbers on my document either.

13 MR. HINDERAKER: I have a document that's marked  
14 J001. We can work off of the -- if you go -- how about  
15 going to in the box then call it 9 of 16. Instead of 10 of  
16 17, call it 9 of 16.

17 THE WITNESS: 9 of 16 I have.

18 BY MR. HINDERAKER:

19 Q. All right. And the signature block on this license  
20 agreement is Chubb -- is client-Chubb & Son. Do we agree  
21 with that?

22 A. That's what it says here, yes.

23 Q. And then we go forward a few pages. And if you look at  
24 the bottom of the page, it has a J-001 and then -017. And  
25 it's called Amendment Number One?



PAMELA LUPATA - CROSS

1 A. I see that.

2 Q. And do you see that on Amendment Number One, it's an  
3 agreement between Fair Isaac Corporation and Chubb & Son, a  
4 division of Federal Insurance, defined as client?

5 A. I see that.

6 Q. We agree? That's what it says? That's what it says?  
7 Yes?

8 A. Yes.

9 Q. And then if we go to the next page where there's  
10 signature blocks, do we agree that the client is Chubb &  
11 Son?

12 A. That's what it says.

13 Q. That's what it says? And if we go to the next page  
14 over it's Amendment Two. And if we look at the opening  
15 paragraph, "Amendment Two is an agreement by and between  
16 Fair Isaac Corporation and Chubb & Son, a division of  
17 Federal Insurance Company, defined as client." Do we  
18 agree?

19 A. That's what it says.

20 Q. And then on the signature block for Amendment Two, it  
21 says, "Client Chubb & Son, a division of Federal Insurance  
22 Company." Do we agree?

23 A. That's what it says.

24 Q. If you go to the exhibit that's numbered 91 in that  
25 binder, you see, I'll give you some orientation. It's a

1 letter dated February 17, 2016. It's to a Thomas Carretta  
2 at Fair Isaac.

3 If you go to the second page where the signature  
4 block, it's Andrew D. Hopp, Esquire, Deputy General  
5 Counsel. This is after the merger.

6 As of February 17, 2016, is Andrew Hopp your  
7 superior?

8 A. No.

9 Q. What was your relationship with Andrew Hopp in the  
10 organizational structure?

11 A. At the time of the merger -- I'm sorry. I thought you  
12 meant manager.

13 Q. I think you understand the question. What's your  
14 relationship with him in the hierarchy?

15 A. At the time of the merger after it happened, Andrew  
16 became my manager.

17 Q. Okay. And I think we have the fact that the merger  
18 happened in January of 2016.

19 A. Correct.

20 Q. So as of this date, you reported to Mr. Hopp?

21 A. That's correct.

22 Q. And Mr. Hopp in the first paragraph of this letter  
23 tells FICO, "Chubb & Son, the contracting party to the  
24 agreement, remains a viable legal entity within the Chubb  
25 Group of Insurance Companies corporate structure and the

1 contracting party to the agreement. In short, Chubb & Son  
2 is still FICO's client as such term is defined in the  
3 agreement."

4 Did I read that correctly, Mr. Hopp's words?

5 A. Can you reread the sentence?

6 Q. Of course. About midway the sentence begins,  
7 "Notwithstanding the acquisition, Chubb & Son, the  
8 contracting party to the agreement, remains a viable legal  
9 entity within the Chubb Group of Insurance Companies  
10 corporate structure and the contracting party to the  
11 agreement. In short, Chubb & Son is still FICO's client as  
12 such term is defined in the agreement." Then it goes on  
13 another subject.

14 That's what Mr. Hopp told FICO on that date.

15 A. That's what it says here.

16 Q. That's what it says.

17 Let's go forward to Exhibit 94.

18 We have seen -- the rest of us in this room have  
19 seen this before. February 25, 2016. It is from Tamra  
20 Pawloski. Did you know her at the time?

21 A. I did.

22 Q. And she was vice president of software compliance and  
23 optimization, global vendor services organization, as it  
24 says on the email?

25 A. That's what it says.

1 Q. Okay. And if you go to the second page, first full  
2 paragraph, on the bottom part, do you see where this  
3 proposal says, "The contracting party to the license  
4 agreement is and remains Chubb & Son, a division of Federal  
5 Insurance Company."

6 That's what it says?

7 A. That is what it says.

8 Q. Now, if I might bring you to -- let me ask you -- I'm  
9 going to ask you to go to Exhibit 0336.

10 And this is a master services agreement between  
11 Chubb & Son, a division of Federal Insurance Company, and  
12 FICO, as you see in the opening paragraph.

13 A. I see that.

14 Q. Agreed? If you would go to the end of the document,  
15 please.

16 Well, first, before we get to the end, would you  
17 stop at the, the Bates number is 21684. It's Section 17.  
18 Do you see that?

19 A. I see the section.

20 Q. Okay. Thank you.

21 Were you familiar with James Black?

22 A. No.

23 Q. No? All right. You see that James Black on this  
24 master services agreement identifies himself as vendor  
25 management group, Chubb & Son, a division of Federal

1 Insurance Company?

2 A. I see that here.

3 Q. Do you have any doubt that the members who were part of  
4 the division Chubb & Son, as well as the officers who were  
5 officers of Chubb & Son, were aware that they were, that  
6 they were part of the Chubb & Son division of Federal?

7 A. Can you repeat the question?

8 Q. Sure. That was kind of a long mess, that question.

9 Mr. Black is acknowledging that he's part of the  
10 Chubb & Son division vendor management group, correct?

11 A. That's what's written here on the page.

12 Q. That's what's written. And as you mentioned, many  
13 people were designated as officers of Chubb & Son.

14 A. That's correct.

15 Q. And do you have any doubt that the people who were  
16 officers of Chubb & Son, as well as people like Mr. Black  
17 who worked in the operating unit of Chubb & Son, knew that  
18 they were members of the division?

19 A. I really wouldn't know that.

20 Q. All right. Did you know that you were an officer of  
21 the division?

22 A. I knew that I was an officer of the division.

23 Q. And then let's go, continuing on, to this. And we  
24 see --

25 I want to go to the signature page, which as an

1 exhibit number is 0336-009.

2 A. I see.

3 Q. All right. Got that? And here we have in bold, you  
4 know, the signature block for Chubb & Son, a division of  
5 Federal Insurance. Do you see that?

6 A. I see that.

7 Q. Okay. Now let's read the rest of the words, but let's  
8 read them a bit carefully.

9 It goes on to say, "For itself and as servicer  
10 for the Chubb Corp. and its noninsurance company  
11 subsidiaries, or as manager of its insurance company  
12 subsidiaries 'Chubb.'"

13 That's exactly what it says?

14 A. Correct.

15 Q. In this description, you did not see the word "on  
16 behalf of," did you?

17 A. No.

18 Q. I'd like to go to Exhibit 948. And if you would go to  
19 page 28. Hang on. I had the wrong page. Let's do page 3.

20 A. I'm sorry. Which page?

21 Q. Three. And there's a category, there's a heading,  
22 Property and Casualty Insurance. Do you see that?

23 A. I see that.

24 Q. The P&C group -- oh, and you are generally familiar  
25 with what a 10-K, Form 10-K is?

1 A. Generally, although I don't handle 10-Ks.

2 Q. No, neither do I, but we both know it's a form that the  
3 corporation, in this instance the Chubb Corporation, files  
4 with the Securities and Exchange Commission.

5 A. Yes.

6 Q. Yes. And so under the heading Property and Casualty  
7 Insurance, it says, "The P&C group consists of subsidiaries  
8 domiciled both in and outside the United States. Federal  
9 Insurance Company is the largest subsidiary in the P&C  
10 group and is the parent company of most of Chubb's other  
11 insurance subsidiaries."

12 Have I read that right so far?

13 A. That's what it says.

14 Q. Okay. And it goes on to say, "Chubb & Son, a division  
15 of Federal, is the manager of several U.S. subsidiaries in  
16 the P&C group." So far I read it right?

17 A. That's correct. That was read correctly.

18 Q. And then it goes on, "Chubb & Son also provides certain  
19 services to other insurance companies included in the P&C  
20 group." Right?

21 A. Correct.

22 Q. So this is describing, do you agree with me that this  
23 is describing what Chubb & Son does?

24 A. It's hard for me to provide opinion on this, because I  
25 really didn't have anything to do with it.

1 Q. All right. I'm not, I'm not trying to even ask you  
2 about -- do you know this? Do you know this?

3 Do you know if Chubb & Son was a servicer for  
4 insurance companies, insurance company subsidiaries, of  
5 Federal or of the Chubb Corporation?

6 A. I also didn't handle the intercompany relationship  
7 agreements.

8 Q. So you don't know if Chubb & Son was a servicer of  
9 other subsidiaries of Federal or of the Chubb Corporation?

10 A. Chubb & Son, a division of Federal Insurance Company,  
11 acted as servicer to other affiliates within the Chubb &  
12 Son organization.

13 Q. Okay. Thank you. And did you know that Chubb & Son  
14 also acted as a manager for other affiliates within the  
15 Chubb Corporation organization?

16 A. Chubb & Son, a division of Federal Insurance Company.

17 Q. Was a manager?

18 A. I'm honestly not sure.

19 Q. You just don't know? Okay. So while the 10-K filing  
20 says Chubb & Son, a division of Federal, is the manager of  
21 several U.S. subsidiaries in the P&C group, you're just not  
22 in a position to say that that's right or wrong?

23 A. I'm really not.

24 Q. Okay. That's fair. I'm not trying to take you where  
25 you can't go.



1           If you would go to Exhibit 26, please. This is,  
2           I'll represent to you we've had testimony about this. It  
3           happens to be a management agreement between Great Northern  
4           Insurance Company and Chubb & Son, a division of Federal  
5           Insurance Company, as you see in the preamble or in the  
6           opening paragraph.

7           A. Okay.

8           Q. Okay.

9           A. I see that.

10          Q. Do you have any knowledge of these agreements that  
11          Chubb & Son, a division of Federal, entered into with other  
12          subsidiary companies of Federal?

13          A. Not really.

14          Q. Not really? Well, if we go to the second page of this  
15          agreement you see the signature block is Chubb & Son, a  
16          division of Federal Insurance Company?

17          A. I see that.

18          Q. It doesn't say, for example -- and that's what it says,  
19          right?

20          A. That's what it says.

21          Q. It does not say Chubb & Son, a division on behalf of  
22          Federal Insurance Company, does it?

23          A. It says Chubb & Son, a division of Federal Insurance  
24          Company.

25          Q. Thank you. Now in this instance we have Chubb & Son, a

1 division, contracting with another insurance subsidiary  
2 within the Federal group. I presume they each know who  
3 they are.

4 A. Can you repeat the question?

5 Q. It's not necessary.

6 You said you went to ACE American, became  
7 employed by ACE American Insurance. Was that on January 1,  
8 2017?

9 A. I don't know when the change happened.

10 Q. Was there a change where all of the people who were  
11 employees of Federal became employees of ACE American  
12 Insurance?

13 A. That I don't know either.

14 Q. Were you formerly an employee of Federal?

15 A. I was formerly an employee of Federal Insurance Company  
16 and then at some point became an employee of ACE American  
17 Insurance Company.

18 Q. Okay. But the date of that transition for you, you  
19 don't know?

20 A. I don't know.

21 Q. And you weren't -- and it just happened to you,  
22 correct?

23 A. It just happened.

24 Q. Right. Now you saw, you saw the descriptions in the  
25 10-K of what Chubb & Son did as a manager or as a servicer.

1 But if I can be clear, are you saying to us that you don't  
2 really know what it meant for Chubb & Son to be a servicer  
3 or a manager for other insurance companies?

4 A. No.

5 Q. Did you know what it meant?

6 A. Yes, I knew what it meant.

7 Q. Okay. And, and was one of the -- did you know  
8 therefore that Chubb & Son, the division, with respect to  
9 the various management contracts that it entered into with  
10 various subsidiaries of Federal was the operating arm that  
11 managed those other insurance company subsidiaries so that  
12 policies of insurance in their names could be issued,  
13 booked, bound, written?

14 A. Could you repeat the question?

15 Q. Sure.

16 A. Because it is long.

17 Q. All right. I'll break it down.

18 Did you know that many of the insurance company  
19 subsidiaries had no Federal employees?

20 A. I wouldn't have known that.

21 Q. Okay. You did not know.

22 Did you know what services that Chubb & Son as  
23 manager provided to other insurance company subsidiaries  
24 within the Federal group?

25 A. Chubb & Son, a division of Federal, would have provided

1 services like the -- they were the contracting arm, right,  
2 of Federal. So they were, they would have been IT  
3 services, marketing services, different types of services.

4 Q. And with respect let's just focus on the IT services.

5 Do you know one way or the other whether Chubb & Son  
6 provided IT services to these various other insurance  
7 companies, other subsidiary insurance companies? Do you  
8 know one way or the other?

9 A. No.

10 Q. All right.

11 A. I don't know that I -- no.

12 Q. So if you don't know whether Chubb & Son as a manager  
13 of other insurance company subsidiaries did or did not  
14 provide IT services, I take it you don't know whether Chubb  
15 & Son as a division would be, would be needing technology?

16 A. Chubb & Son was the contracting arm of Federal  
17 Insurance Company, so --

18 Q. I'm not trying to interrupt you. I'm trying to ask you  
19 factual questions. I think whether there's a legal issue  
20 in all of that will be for the court, not for us. Okay?

21 A. Okay.

22 Q. My question was, as a -- as we saw in the 10-K, the  
23 Chubb Corporation says to the public that Chubb & Son is a  
24 manager, provides management services, to other subsidiary  
25 insurance companies of the Federal group.

1 Do you know what those services were that it  
2 provided as manager?

3 A. Not, not really. I --

4 Q. It might be outside your role. You don't have to know.

5 A. Yeah. I don't really know. I wouldn't have been  
6 involved in --

7 Q. So you don't know what services Chubb & Son in any  
8 detail provided to the insurance company subsidiaries?

9 A. Not with any detail.

10 Q. Okay. And so why Chubb & Son, the division, reached  
11 out to FICO and then entered into a license agreement for  
12 technology called Blaze Advisor, that's not something that  
13 you know about.

14 A. I would not have known anything about the engagement.

15 Q. You may not know, but do you know one way or the other  
16 about all of the persons who were employed by Federal  
17 Insurance Company were in the United States?

18 A. I would not know that.

19 Q. Don't know one way or the other?

20 A. I wouldn't know one way or the other.

21 MR. HINDERAKER: Okay.

22 No further questions, Your Honor.

23 THE COURT: Thank you, Mr. Hinderaker.

24 Ms. Godesky, any redirect?

25 MS. GODESKY: No. Thank you.

1 THE COURT: All right. Thank you. Call your  
2 next witness.

3 You may be excused, Ms. Lopata. Thank you.

4 (Witness excused.)

5 MS. GODESKY: Your Honor, defendants next witness  
6 is Michael Sawyer by video.

7 THE COURT: Okay.

8 MS. GODESKY: And the parties have agreed to the  
9 following introduction to the video.

10 Michael Sawyer is a former FICO employee.  
11 Mr. Sawyer was employed by FICO as a manager of client  
12 services from September 2007 to February 2010 and client  
13 partner for insurance and health care from March 2010 to  
14 February 2014.

15 Mr. Sawyer was deposed on October 2nd, 2018.

16 THE COURT: Just for planning purposes, do you  
17 know how long this video will run, approximately?

18 MS. GODESKY: 1 hour, 40 minutes.

19 THE COURT: Okay. Well, we won't get through it  
20 all tonight.

21

22 MICHAEL SAWYER BY DEPOSITION

23 BY MR. FLEMMING:

24 Q. Good morning, Mr. Sawyer.

25 A. Good morning.

1 Q. I'm Terry Fleming. I represent the defendants in this  
2 case. Can you please state your full name and work  
3 address?

4 A. Sure. It's Michael Lemuel Sawyer. Currently I work at  
5 201 Jones Road in Waltham, Massachusetts.

6 Q. All right. And are you represented by counsel today?

7 A. Yes.

8 Q. And when did you retain counsel?

9 A. Officially earlier this week.

10 Q. And could you identify your counsel?

11 A. Yes. It's Mr. Hinderaker.

12 Q. All right. And what did you do to prepare for the  
13 deposition today?

14 A. I met with my counsel yesterday for a number of hours.  
15 Other than that, nothing.

16 Q. Could you tell me in general terms your educational  
17 background and work history?

18 A. Sure. I have a bachelor's degree from The university  
19 of Michigan, a master's degree from the University of  
20 Southern California. I've held numerous positions since I  
21 graduated from college in either insurance, consulting or  
22 software technology terms.

23 Q. Could you walk through your employment history.

24 A. From the date that I graduated college?

25 Q. Please.

1 A. Sure. So roughly 2001 to 2002, at a third-party  
2 administrator for 401K plans in Detroit called Freedom One  
3 Financial. From 2002 to roughly 2005, I worked at Sun Life  
4 Financial. From 2005 to 2007, I worked at Bearing Point  
5 Consulting. It was formerly known as KPMG Consulting.

6 From 2007 to 2015, I worked at FICO. For 2015, I  
7 worked at a company at that time which was known as  
8 Connolly Health Care. It then changed names during my time  
9 there to Connolly Eye Health Technologies.

10 I then returned to FICO from I guess -- maybe I  
11 may have misstated the year. I think it was -- 2014 is  
12 when I was at Connolly and Connolly Eye Health. I then  
13 returned to FICO in 2015 until October 2017, and since  
14 October -- November of 2017, I've work at a company called  
15 Versant Technologies, which just last Friday changed names  
16 to Cotiviti.

17 Q. What does Versant Technologies/Cotiviti --

18 A. Cotiviti. It's C-O-T-I-V-I-T-I. We are a health care  
19 focused organization that sells software and analytics, the  
20 majority to health plans, to help them with risk, quality  
21 performance and payment accuracy.

22 Q. Showing you what's been marked as Exhibit 72, can you  
23 identify that document?

24 A. Yes, I mean. It is my LinkedIn profile.

25 Q. So let's walk through your employment at FICO, if we



1       could. So if we turn to the second page there, it looks  
2       like your first stint at FICO was between September 2007  
3       and February 2014; is that right?

4       A. That is correct.

5       Q. And could you tell me, are those titles that are listed  
6       on the LinkedIn page correct that you were manager of  
7       client services from September 2007 to February 2010, and  
8       then the client partner, insurance and health care,  
9       March 2010 to February 2014?

10      A. Yes, they are correct. My formal title for the first  
11      position was likely customer support manager in the  
12      official docket at FICO.

13      Q. Customer support manager?

14      A. Correct.

15      Q. And what were your duties as customer support manager  
16      during that time period?

17      A. They were a blend of sales, as well as account service  
18      for existing clients within the insurance and health care  
19      business segment. I supported client partners who owned  
20      the responsibility for sales, as well as service delivery  
21      to our existing clients.

22      Q. And what were your duties as client partner insurance  
23      and health care from March 2010 to February 2014?

24      A. In that capacity, I would have owned a portfolio of  
25      client accounts where I was responsible for the baseline

1 revenue associated with those accounts, as well as I was a  
2 quota carrying sales rep for new revenue generation.

3 Again, all within the insurance and health care segment.

4 Q. So who -- what clients were included in your portfolio  
5 of client accounts during that time period?

6 A. There's too many to list. I probably had somewhere  
7 between 30 and 40 existing revenue generating accounts that  
8 were part of my portfolio. And then I managed probably all  
9 new business development for roughly eight or nine states,  
10 primarily the Northeast and mid Atlantic.

11 So in any given year, I interacted with probably  
12 50 or 60 different organizations.

13 Q. And was Chubb one of those organizations?

14 A. Yes. Chubb was one of those organizations during that  
15 entire period of 2010 to 2014.

16 Q. Was Chubb one of your more significant accounts during  
17 that time period?

18 A. How would you define "significant"?

19 Q. In terms of revenue and time that you spent on the  
20 account?

21 A. During that period of my time there from 2010 to 2014,  
22 I would say yes to both of those criteria. They were a  
23 significant revenue-generating account, as well as time  
24 spent.

25 Q. So could you estimate how much revenue was being

1 generated from Chubb during that time period in general  
2 terms?

3 A. I would -- so there's multiple revenue streams that  
4 would occur. One would be software maintenance payments,  
5 and then the second would be professional services that we  
6 offered, consulting services. The maintenance is easier to  
7 estimate as that was a recurring fee. You know, roughly  
8 \$250,000 I would estimate on an annual basis.

9 Professional services was a lot more  
10 intermittent. There was a large project that we did for  
11 Chubb that probably crosses over those two positions,  
12 somewhere between 2009 into the time when I was client  
13 partner. I would estimate that, you know, you're looking  
14 at roughly a million dollars of professional services  
15 associated with that project.

16 There was probably a few other smaller-sized  
17 deals, you know, hundred thousand dollar type deals in  
18 there but nothing else significant.

19 Q. What project was that?

20 A. I believe Chubb referred to it as the Premium Booking  
21 modernization project.

22 Q. What did that entail?

23 A. Chubb had a large COBOL based application that had  
24 grown up over many years that was designed to validate data  
25 from their policy administration systems downstream into

1       their financial ledgers. That project was to replace that  
2       COBOL decision application with the Fair Isaac Blaze  
3       Advisor product.

4       Q. All right. So other than this one large project that  
5       you just referenced, do you recall any other significant  
6       projects during that time period prior to the time you left  
7       FICO the first time?

8       A. No. We would periodically sign what we referred to as  
9       a retainer contract where Chubb would buy a small bucket of  
10      hours from us on a pre-purchase basis, which we would then  
11      deploy small, you know, teams of resources for smaller  
12      finite periods of time to help Chubb when they encountered  
13      an issue, whether it was, you know, requirements or design  
14      for something, but it was all on a much, much, much smaller  
15      scale than the Premium Booking project.

16      Q. All right. So why did you leave FICO the first time in  
17      February 2014?

18      A. To pursue a new career opportunity that presented  
19      itself to me. I was recruited by the -- what was then  
20      Connolly Health Care, which became Connolly Eye Health and  
21      actually then became Cotiviti. So you can see my careers  
22      are merged a bit here in that the company that I was  
23      working for last week bought Cotiviti, and we rebranded as  
24      Cotiviti. So even though Cotiviti is listed here twice,  
25      they were separate entities the two times that I've worked

1 for them.

2 So I was recruited by Cotiviti, Connolly,  
3 Connolly Eye Health to come work for them in 2014.

4 Q. And when did you return then to FICO?

5 A. I believe my start date was February 16th of 2015 then.

6 Q. And why did you leave Cotiviti?

7 A. The opportunity didn't pan out. It did not meet my  
8 expectations on why I left FICO.

9 Q. So when you returned to FICO, did you have -- that was  
10 in March 2015, correct?

11 A. Correct. February of 2000 -- end of February 2015.

12 Q. Okay. And when you returned, you had the same position  
13 and title that you had when you left back in February 2014?

14 A. That is correct.

15 Q. Okay. And what was your -- what were your  
16 responsibilities as the client partner at that time? Was  
17 it the same as before you left?

18 A. It was predominantly the same in terms of the  
19 responsibilities with the role. My territory that I had  
20 responsibility for had changed. When I left the first  
21 time, they had reorganized the territories for the  
22 remaining client partners; and so when I came back, I did  
23 not assume all prior client accounts that I had previously.

24 Q. So in terms of the number of accounts that you had when  
25 you returned to FICO, was it similar to what you had before

1       you left?

2       A.   Yes, it was.

3       Q.   So the most significant change from your perspective  
4       was just the geographical location of the clients or the  
5       territories that you were responsible for?

6       A.   That was part of it.  Geographic responsibility.  I did  
7       not assume -- reassume responsibility for the mid-Atlantic  
8       region.  And then given my experience at Cotiviti,  
9       Connolly, Connolly Eye Health at that time focused on  
10      health care.  I took on some more national-based health  
11      care focused opportunities for FICO?

12      Q.   Then your final position at FICO was as -- I'm sorry.  
13      There are two of them there.  You were insurance and health  
14      care segment leader from September 16th, June 2017; is that  
15      right?

16      A.   That is correct, but it was limited to our fraud  
17      security and compliance solutions.  So FICO had undergone a  
18      reorganization and as part of that focussed the sales staff  
19      on, more specifically on products versus accounts, and I  
20      focussed for that period of September 2016 to June of 2017  
21      only on our fraud security and compliance solutions for the  
22      most part.

23      Q.   So was that a job that was different than the job you  
24      had before?

25      A.   Yes, it was.  It was reporting to a different

1 individual. It reported into our fraud, security and  
2 compliance business unit, as opposed to previously I  
3 reported to the leader of the insurance group at FICO. But  
4 largely the responsibilities were the same in terms of  
5 selling new products into client accounts in insurance and  
6 health care, but focussed on fraud, security, and  
7 compliance solutions.

8 Q. Who were you reporting to before as the leader of the  
9 insurance group?

10 A. I reported to Russ Schreiber.

11 Q. And who were you reporting to when you were working in  
12 the insurance and health care segment group involving  
13 fraud, security. And compliance solutions.

14 A. Bob Shiflet.

15 Q. Now during this time period when you were working with  
16 regard to fraud, security and compliance solutions, did  
17 Chubb continue to be a client?

18 A. They did.

19 Q. Okay. And were you responsible for the other services  
20 that were provided to Chubb during that time?

21 A. Yes.

22 Q. And then your final position at FICO was as a segment  
23 leader of insurance and health care from July 2017 to  
24 November 2017?

25 A. That is correct.

1 Q. And what were your duties in that position?

2 A. I was a sales leader for a team of sales and pre-sales  
3 resources responsible for selling FICO's solution, all  
4 solutions into the insurance and health care segment.

5 Q. And how did that differ from when you were acting as a  
6 contract partner or client partner?

7 A. In the client partner role, I was a direct quota  
8 carrying sales rep responsible for the actual development  
9 of new business. As the segment leader, I was a sales  
10 manager. So I had a team of folks that were responsible  
11 for the direct client engagement and sales.

12 Q. And why did you leave FICO in -- first of all, did you  
13 leave FICO in November 2017?

14 A. I did.

15 Q. And why did you leave FICO?

16 A. Again, to pursue another career opportunity that I  
17 thought offered me a position that better fit my career  
18 direction.

19 Q. Let me ask you some general questions. How does FICO  
20 generate revenues, or during the time that you were  
21 employed at FICO, how did it generate revenue?

22 A. FICO operates largely in two separate business units.  
23 One is a scores unit, which develops and offers syndicated  
24 analytic scores to the marketplace, such as your FICO  
25 credit score. There are others in that portfolio. And



1 then they operate a software segment.

2 That software segment develops software  
3 applications and software tools, which they sell to a  
4 variety of industries, which generates revenue through  
5 software licenses, software maintenance and support  
6 contracts, professional services, and probably some other  
7 additional commercial vehicles, but largely those are the  
8 main sources.

9 Q. And are you familiar with the Blaze Advisor?

10 A. Yes.

11 Q. What does Blaze Advisor do; what is its function?

12 A. Blaze Advisor is a business rules management system.  
13 It is a domain agnostic piece of software that is designed  
14 to allow companies to build out decision logic, business  
15 rules, deployment of analytic models, decision trees, to  
16 help automate decisioning.

17 Q. And Blaze is one of the products that FICO sells; is  
18 that correct?

19 A. Yes. That is correct.

20 Q. What was your involvement in the licensing process at  
21 FICO during your employment there?

22 A. It varied by role in the organization. When I was in  
23 the manager of client services position, when I began at  
24 FICO, I was purely in a support function where the client  
25 partners that I reported to were responsible for the

1 contracts that we would enter into with clients.

2 When I became a client partner, I took on  
3 responsibility for the negotiation of contracts with  
4 clients for new services, as well as to up-sell for  
5 additional products. And so I was possible for  
6 orchestrating the contracting process in combination with,  
7 you know, FICO business leadership, as well as our legal  
8 teams.

9 And then as a segment leader, I was in more of an  
10 oversight role of the quota carrying reps that were  
11 managing that process as I had when I was a client partner.

12 Q. Who were the client partners responsible for the Chubb  
13 relationship during the time that you were employed at  
14 FICO?

15 A. When I started at FICO, Russ Schreiber, I believe, was  
16 the assigned client partner. Following Russ, I believe it  
17 was a gentleman named Ian Brodie, B-R-O-D-I-E. Then I was  
18 responsible for the Chubb account. I do not know with  
19 certainty who was responsible for the Chubb account during  
20 the year that I spent away from FICO.

21 When I returned to FICO in, I think it was, 2016  
22 or -- let's see -- 2015, I reassumed responsibility for the  
23 Chubb account and largely held that almost until the end of  
24 my time there with the firm.

25 Q. So through like March 2017?

1 A. I held it through -- at least through June of 2017.

2 Q. And when did you first assume that role?

3 A. It would have been when I first became a client partner  
4 in March of 2010.

5 Q. And what were your -- was anybody else responsible for  
6 the Chubb relationship at the time that you were  
7 responsible?

8 A. I should clarify that I was responsible for our North  
9 American business. FICO was not organized in our insurance  
10 segment to have a global account owner. We were  
11 responsible for -- I was responsible for Chubb domestically  
12 in the U.S., and, no, there was nobody else that would have  
13 had the same responsibility that I did for the account in  
14 the U.S. during that time.

15 Q. So during that time period that you were employed at  
16 FICO, to your knowledge, who was responsible for Chubb  
17 outside of the United States?

18 A. So I can't speak to every geography around the world.  
19 I think, but I'm not 100 percent certain, that Richard Hill  
20 in the UK had responsibility for EMEA. For what time  
21 frames, I cannot be certain.

22 Outside of EMEA, I don't know who would have had  
23 responsibility for the accounts.

24 Q. And when you said "domestically" in your last response,  
25 is that the same as the United States?

1 A. Yes, the United States.

2 Q. During the time that you were the client partner  
3 responsible for the Chubb relationship, how many other  
4 accounts were you also the client partner responsible for?

5 A. As I said earlier, roughly 30 to 40 accounts that had  
6 recurring baseline revenue and then all new sales  
7 opportunities within my geographic region, regardless of  
8 whether FICO had had a relationship with those clients  
9 previously.

10 Q. So during the time that you worked at FICO, was your  
11 compensation dependent on the revenues generated by  
12 particular clients?

13 A. Yes.

14 Q. How so?

15 A. As a client partner, the compensation models changed  
16 from year to year, but in general they had two major  
17 components. The first was a revenue target, and the second  
18 would be what they refer to as a bookings target.

19 Q. I'm sorry. I didn't hear you.

20 A. A bookings, B-O-O-K-I-N-G-S. So on a bookings target,  
21 that would be the total contract value of a new sale that  
22 FICO expected to recognize as part of that contract. So  
23 that is a, you know, new business-focussed metric.

24 The revenue component was a combination of  
25 existing baseline revenue from contracts that had been

1       booked in prior quarters. So ensuring that revenue was  
2       recognized by FICO, plus any new revenue that was generated  
3       based on contracts that were booked during the fiscal year.

4               So that combination made up my quota targets. In  
5       addition to that, I did have a base salary.

6       Q. Mark this as Exhibit 73 and hand to the client.

7               Can you identify this document?

8       A. It appears to be an email from me in November 2014 --  
9       November 14, 2008, to Ian Brodie, Rich Hill and Russell  
10      Schreiber for a meeting to discuss the Chubb license.

11      Q. So, Mr. Sawyer, could you read the text of your email  
12      to these gentlemen?

13      A. Yes. It says, "All, please join this call to discuss  
14      the Chubb license agreement and plan for Chubb Europe.  
15      Attached are the three SLSA contracts for the latest Chubb,  
16      and the latest Chubb annual report."

17      Q. Do you recall what was the reason for setting up this  
18      appointment and sending these documents?

19      A. Most likely, it was a request from Ian Brodie, who I  
20      reported to at this time and who was the client partner for  
21      Chubb. As a client support manager, it would be my role to  
22      help organize and coordinate meetings for FICO in support  
23      of Ian.

24               At this point in time, I believe that Russell  
25      Schreiber was the leader of the insurance group at FICO,

1 and so we would have included Russ as well.

2 Q. Right. And I'm not asking you to speculate, but would  
3 you periodically send out, at the request of the contract  
4 partner, the various software licenses for a particular  
5 account and the most recent client information in order to  
6 discuss a new project or an existing project?

7 A. That -- yes. So, you know, if there was a question, a  
8 new project, dialogue that the client partner would have  
9 with the account, yes, it would be in my scope of  
10 responsibility to coordinate a discussion on behalf of that  
11 client partner and to, you know, gather relevant materials  
12 internally to support those discussions.

13 Q. Okay. And would there have been any other reason to  
14 have sent out all of the software licenses for a particular  
15 client and the most recent information about that client,  
16 other than to discuss either a new project or a pending  
17 project?

18 A. It's possible, but I think most likely it was to  
19 discuss a project or an inquiry from the client.

20 Q. Okay. Fair enough. And you don't recall a particular  
21 project that was discussed in connection with this email;  
22 is that fair?

23 A. I do not.

24 Q. Do you see the reference to a plan for Chubb Europe?

25 A. Yes, I see that.

1 Q. What was the plan for Chubb Europe?

2 A. I do not know.

3 Q. Now, were you at that time familiar with the actual  
4 license and the amendments that Chubb had with FICO?

5 A. I cannot be certain if I had reviewed them prior to  
6 this meeting or not. So I can't say yes or no to that  
7 question.

8 Q. Did you have any understanding as to the -- at that  
9 time as to the geographical scope of the FICO license with  
10 Chubb?

11 A. Not that I can recall. At that point in time, it would  
12 have been the client partner's responsibility for managing  
13 that. So Ian Brodie would have been the client partner at  
14 that time, and that would be in his responsibility.

15 Q. Now, were you familiar at that time or did you  
16 familiarize yourself with the Chubb software license and  
17 the amendments to that license?

18 A. I most likely did. FICO stores their contracts  
19 separately in the contracts library based upon, you know,  
20 each executable agreement, and so the three contracts that  
21 you provided here in Exhibit 73 would have been stored  
22 separately within our contract system.

23 And based on that, you know, I can't be certain  
24 that I did trace everything back through all the separate  
25 contracts. You know, it's most likely I would have gone

1 and read the Amendment Two as the most recent to reflect  
2 the status of the relationship. So I cannot be certain  
3 that I went back and read the full 17 pages of the original  
4 agreement.

5 Q. So are you familiar with this software license and  
6 maintenance agreement?

7 A. Generally, yes.

8 Q. Okay.

9 A. Not the specifics as it pertains to the unique one for  
10 Chubb.

11 Q. Do you recall, at that time, when there was a  
12 discussion about a plan for Chubb Europe, any internal  
13 discussions about the scope of this software license and  
14 maintenance agreement?

15 A. I do not. You know, looking at the attendees on that  
16 list, Ian Brodie was the client partner who was responsible  
17 for that. Russ Schreiber was the client partner when the  
18 license agreements were sold to Chubb. So I was -- I  
19 believe I was mostly a coordinator in this effort.

20 Those two individuals were the authoritative  
21 figures on the relationship with Chubb.

22 Q. Was it your understanding that the basic FICO software  
23 license excluded client affiliates from using the license?

24 MR. HINDERAKER: Could I ask a clarifying  
25 question? When you say basic, are you talking about the



1 license with Chubb or just --

2 MR. FLEMING: In general.

3 MR. HINDERAKER: -- just a general.

4 THE WITNESS: I'm not aware of what our standard  
5 language was related to affiliates, although it was a  
6 common item for negotiation with clients in general.

7 BY MR. FLEMING:

8 Q. What was a common part of negotiation?

9 A. Determining the definition of affiliates within the  
10 contracts.

11 Q. Okay. Do you recall any discussions in 2008 as to  
12 whether the FICO license agreement permitted use by a Chubb  
13 affiliate in Europe?

14 MR. HINDERAKER: Same clarifying question: Are  
15 we talking about the Chubb license or just general licenses  
16 now?

17 MR. FLEMING: Just general licenses.

18 MR. HINDERAKER: Thank you.

19 THE WITNESS: No, I don't recall any discussions  
20 that took place in 2008.

21 BY MR. FLEMING:

22 Q. Do you recall any discussions about that topic while  
23 you were at FICO?

24 A. I do.

25 Q. What do you recall?

1 A. I recall at some point after I assumed responsibility  
2 as client partner for Chubb reviewing the agreements. And  
3 at that point in time, I realized the territory clause  
4 within the original software license service agreement.  
5 And, you know, it clarified for me, you know, the scope of  
6 Amendment Two based on territory clause.

7 And it highlighted for me, you know, a potential  
8 discrepancy in the way that my predecessors had, you know,  
9 interpreted that clause.

10 Q. And when you're talking about your predecessors, are  
11 you referencing Ian Brodie or anybody else?

12 A. Ian Brodie and Russ Schreiber.

13 Q. How had they interpreted that clause? What was the  
14 discrepancy that you just referenced?

15 A. Can you clarify your question, please?

16 Q. What discrepancy are you referencing?

17 A. The extent to which the enterprise license in Amendment  
18 Two applies from a territory perspective.

19 Q. And what do you mean by that?

20 A. I can't speak to, you know, Ian or Russ's  
21 interpretation of the agreement. However, based on  
22 knowledge that I had, you know, in working with Henry  
23 Mirollyuz and the team at Chubb that there may have been  
24 some use of the products for Chubb businesses outside the  
25 United States.

1 And so when I read the agreements, went back  
2 through the territory, I, you know, highlighted that to  
3 Russ Schreiber. I can't be certain on the date.

4 Q. So when you say you highlighted that to Russ Schreiber,  
5 are you referencing an email that you sent to him at that  
6 time?

7 A. No. It would have been in discussion.

8 Q. Was it ever memorialized in an email?

9 A. I couldn't recall for the nine years that I worked at  
10 FICO if I wrote an email or not, but most likely it was in  
11 discussion with Russ.

12 Q. And when was that discussion?

13 A. So it would be during the period of time that I was a  
14 client partner responsible for the Chubb account. So it  
15 was somewhere between March 2010 and February 2014. My  
16 guess is it's in that period of time when I was responsible  
17 for the account.

18 Q. So in responding to that question, you were referencing  
19 the LinkedIn document, right?

20 A. Yes.

21 Q. So you don't have a separate recollection of it without  
22 referencing a document; is that fair?

23 A. That is correct. I was referencing Exhibit 72 just to  
24 refresh my mind of the period of time in which I served in  
25 that role at FICO.

1 Q. Okay. So let's talk about what you had learned from  
2 Henry Mirollyuz about the use of the Blaze product for Chubb  
3 business outside of United States. What did you learn from  
4 him?

5 A. So I -- in multiple conversations with Henry, largely  
6 centered around presentations that Henry would do  
7 internally to Chubb folks around the use of Blaze Advisor,  
8 there was reference to an application of Blaze Advisor for  
9 renewal processing, I believe, supporting their UK  
10 business.

11 And I also engaged in conversations with Henry  
12 about some interest that the European unit had around a  
13 decision simulation product that FICO also offered. But I  
14 do not recall having any direct conversations with members  
15 of, you know, a European team for Chubb.

16 Q. Now, at this time that you came to this determination,  
17 which was sometime between March 2010 and February 2014,  
18 was it your understanding based on communications that you  
19 had with Henry Mirollyuz and others at Chubb that Chubb had  
20 the same interpretation of these provisions as your  
21 predecessors did?

22 A. You know, I have a hard time speaking to what Henry's  
23 perception was of the agreement. You know, and through my  
24 time at FICO and generally in my career, you know, I have  
25 been very careful not to make contract interpretations on

1       behalf of my clients.

2               So when there is, you know, a question about the  
3       scope of the license agreement, you know, my approach has,  
4       you know, typically been to provide the contract or the  
5       language to my client to allow them to interpret the  
6       language for themselves.

7               So I do not remember or recall making the  
8       definitive statement to Henry or Chubb as to what the scope  
9       of their license agreement was.

10      Q.   Right.  And I'm not asking about what you told them,  
11      but, rather, based on their actions and statements, did it  
12      appear to you that Chubb interpreted this contract the same  
13      way that your predecessors did?

14      A.   Based on their behavior, I would say that's a fair  
15      statement.

16      Q.   Okay.  I mean, from your perspective, Henry Mirolyuz  
17      and others at Chubb were not in any way concealing the fact  
18      that Chubb was using apps, using Blaze in Chubb Europe and  
19      in Chubb Canada, correct?

20      A.   So with respect to Chubb Europe, Henry was very open  
21      about the use of the software to support Europe.  You used  
22      a phrase "an application in Europe."  I'm not aware of  
23      where the actual technology sat for that application, but  
24      he was open about, you know, the use of the software for  
25      the benefit of Europe.

1 With respect to Canada, I was unaware that Chubb  
2 was using the software for the benefit of Canada. I did  
3 have a number of conversations with Henry about a potential  
4 use of the software in Canada. And as a sales  
5 professional, right, advancing the use of our software  
6 product, I do recall offering to Henry to meet with his  
7 team in Canada, help them understand the capabilities of  
8 our software product to evaluate it for their use case, but  
9 to my best recollection, the Chubb Canadian team did not  
10 take up that offer.

11 And, you know, following that, you know, my  
12 communication with Henry on the subject, you know, would,  
13 you know, die out. And so I was not certain at any point  
14 in time until, you know, late in the dispute that something  
15 had actually happened in Canada in terms of the use of the  
16 software.

17 But, again, I didn't, even with that I don't know  
18 where the software physically resided.

19 Q. When did you have these discussions with Henry Mirollyuz  
20 about the potential of using the app in Canada?

21 A. I can't recall when that occurred.

22 Q. Did it occur prior to or after the time that you  
23 determined that your interpretation of the software license  
24 agreement was different than your predecessor's?

25 A. I can't be certain; however, I think the -- my response

1 to the inquiry from Henry would -- in terms of what I was  
2 being asked to do in terms of sales, probably wouldn't have  
3 varied much regardless of the timing of that, right?

4 If a client were to come to me and suggest that  
5 we have a knew potential use for your software, whether  
6 that would be, you know, something that is licensed under  
7 their current license agreement or would be a new sales,  
8 new license sale opportunity, I would still offer to  
9 support the client in a similar way to help them evaluate  
10 the use case of the software, you know, whether it be to  
11 try and sell professional services or sell a license.

12 So because I would have reacted in a very similar  
13 way to that request from Henry, I couldn't be certain if it  
14 was before or after.

15 Q. So you did not relate to Henry Mirollyuz at that time  
16 that you believed that the current software license  
17 agreement between Chubb and FICO would not extend to use by  
18 Chubb Canada?

19 A. No. I can definitively say no, I did not.

20 Q. Mr. Sawyer, prior to the time you became the client  
21 partner, would you agree that it was not your  
22 responsibility to understand the software license  
23 agreement -- the software license agreements with your  
24 customers?

25 A. I would say it was my responsibility in combination

1 with the client partner who owned the client relationship  
2 to understand the scope of our services for the client, but  
3 it was not -- as I was not the sole responsible party for  
4 administration of the account, I was, you know, serving the  
5 client partner whose ultimate say in how things progressed  
6 with the client.

7 Q. So certainly when you became a contract partner, you  
8 understood it was your responsibility to understand the  
9 FICO's software license agreements with the customers that  
10 you serviced?

11 A. I want to clarify that my title was client partner, not  
12 contract partner.

13 Q. Client. Excuse me.

14 A. And yes, when you are the client partner for an account  
15 at FICO, it is your responsibility to understand the  
16 contracts associated with your assigned accounts.

17 Q. So in the ordinary course, when would you have had a  
18 discussion with Henry Mirolyuz about the scope of the  
19 software license, if at that time you believed that the  
20 license would not allow use of Blaze in Europe?

21 A. At this point in time, it would not be my  
22 responsibility to have that conversation. As you see on  
23 this email, Ian Brodie is copied. Ian is the client  
24 partner at that time. I would have been supporting Ian in  
25 this effort with Henry.



1           And it's likely that, you know, based on a  
2           conversation that Ian had with Henry that Ian requested  
3           that I pull this relevant case study and send it over to  
4           Henry. So as it relates to this specific email, it would  
5           not have been in my scope of responsibility.

6           Q. Showing you what's previously been marked as  
7           Exhibit 47, do you recall seeing this email chain before?

8           A. I don't remember this specific email, but I remember  
9           the event described at the very top.

10          Q. What are those events?

11          A. As you see, they reference a POC of Blaze versus  
12          Drools. Drools is an open source business rules management  
13          system. And, you know, it appears that FICO assisted Chubb  
14          with positions on the capabilities of Blaze Advisor so that  
15          individuals doing a comparison of Drools versus Blaze would  
16          understand the competitive differentiations between the  
17          Blaze Advisor product.

18          Q. And where was this product going to be used?

19          A. So I don't specifically recall from the conversations  
20          there, right, but in terms of looking at the email, Richard  
21          Hill was involved and Larry Jacobson was involved, which  
22          are both members of the FICO team in EMEA. So it looks as  
23          if it was related to use in EMEA or Europe.

24          Q. Okay. So was Richard Hill the client partner for Chubb  
25          responsible for European operations?

1 A. I don't know his specific title, but he was a sales  
2 resource in Europe responsible for insurance.

3 Q. Okay. Well, why don't we go to the very first email in  
4 the second page. That first email is an email from Richard  
5 Hill to Russ Schreiber, dated August 14th, 2012. And do  
6 you see where it says, "Hey, Russ, Chubb UK have started  
7 being interested in Blaze again, and I'll try and speak  
8 with the new contact who apparently wants to do a POC for  
9 underwriting."

10 A. I see that.

11 Q. Okay. And then in the email about above that, you're  
12 copied on an email from Russ Schreiber to Richard Hill  
13 responding to the email. And it says, "They do have a  
14 Blaze ELA. We're working a model central POC." "The" -- I  
15 think you meant they, "need model central simulator and  
16 always buy services in various quantities."

17 I'm sorry. That's Russ Schreiber talking. And  
18 he says, "Check with Mike Sawyer as to the lay of the  
19 land." So you were copied on that email. What did you  
20 understand he was talking about?

21 A. So what part of his -- what part of his sentence are  
22 you asking me to weigh in on?

23 Q. Well, what was the issue that Russ Schreiber was  
24 discussing with Hill in this email that you were copied on?

25 A. Sure. Give me a second to read --

1 Q. Sure.

2 A. -- the first email in the chain. Sure.

3 So the first email in the chain relates to  
4 Richard Hill and his sales duties, exploring opportunities  
5 to sell software and services to Chubb in the UK. Russ's  
6 email provides, you know, his viewpoint on the Blaze  
7 license agreement to Richard. Model central simulator and  
8 services are additional opportunities for software sales  
9 that Chubb has -- that Russ has suggested to Richard.

10 And his last statement, "Check with me on the lay  
11 of the land," in this context most likely relates to the  
12 client satisfaction of Chubb at the current time, given  
13 Richard's note here around Owen Williams of Chubb  
14 previously being supportive of FICO.

15 Q. So when you say that Russ Schreiber is giving his  
16 viewpoint on the Blaze license, what do you mean by that?

17 A. I can only interpret what he's wrote here, right?

18 Q. Right.

19 A. And, you know, what he states is that they have a Blaze  
20 enterprise license agreement.

21 Q. Okay. And did you understand that to mean that from  
22 Russ Schreiber's perspective, he understood that the FICO  
23 license agreement with Chubb allowed use in Europe?

24 A. Yes.

25 Q. So if you turn then to the first page, which is an

1 email from you to Richard Hill, dated August 14th, 2012,  
2 could you read the first two lines out loud?

3 A. "It's probably two to three years old at this point.  
4 They did a POC of Blaze versus Drools and selected Blaze."

5 Q. Okay. And I'm talking about the email at the bottom of  
6 the page.

7 A. Oh, I'm sorry. "Richard, I am the CP for Chubb. They  
8 do have a global ELA for Blaze and have an automated  
9 underwriting application running in the UK already."

10 Q. So at least at this time, it was also your view that  
11 the FICO license with Chubb allowed Chubb to use Blaze in  
12 the United Kingdom; is that fair?

13 A. That is correct.

14 Q. So you were aware of Chubb's use of Blaze in the  
15 United Kingdom going back to sometime around August 2010 to  
16 August 2011 -- no. I'm sorry -- August 2009 to  
17 August 2010?

18 A. Based on the dates in this email, that appears to be  
19 correct.

20 I should point out, though, that the email, the  
21 first email relates to a POC, which is the evaluation of  
22 the potential use of the software, not necessarily  
23 referencing an actual deployment or use of the software for  
24 production purposes.

25 Q. So on the very first email that you've now referenced a

1 couple of times, that's the email from you to Richard Hill,  
2 dated August 14th, 2012. You say in your response to his  
3 question, "Did you know about the underwriting app in the  
4 UK?"

5 You responded, "It's probably two or three years  
6 old at this point."

7 Is that right?

8 A. That is correct. I responded that the potential use of  
9 the software for an underwriting app as referenced in  
10 Richard's email was probably two to three years old at that  
11 point, and my knowledge of that was based on supporting  
12 Henry in that POC to determine the -- you know, the  
13 competitive advantages of Blaze versus Drools, and based  
14 on, you know, the time frame of that POC happening two to  
15 three years earlier.

16 Q. And you state in that first email that you helped some  
17 folks at Chubb U.S. put together a position paper to  
18 influence that decision. Do you recall what it is that  
19 you're referencing?

20 A. Yes. To influence the decision that for the particular  
21 use case that Blaze was a better fit than Drools was.

22 Q. So that would have been back in 2009 to 2010 when you  
23 put together this position paper?

24 A. I would not have put the position paper together. It  
25 would have been done by our pre-sales organization that has

1 technical expertise. You know, in 2009, most likely Ian  
2 Brodie at this point in time was the client partner and  
3 would have requested me to coordinate with our pre-sales to  
4 respond to, you know, the items of question from the Chubb  
5 team.

6 Q. And do you recall what specifically was done by  
7 Chubb -- I'm sorry -- what was done by FICO in putting  
8 together a position paper to influence Chubb's decision?

9 A. To my recollection, there was a physical document put  
10 together that described the functionality that Blaze  
11 offered on, you know, specific technical features and  
12 capabilities that Henry Mirollyuz and the Chubb team had  
13 asked about.

14 Q. So is it the circumstances that are referenced in email  
15 and this email chain itself, are those some of the reasons  
16 why you believe that your predecessors had a different  
17 interpretation of the software license agreement that you  
18 came to at some point between 2012 and 2014?

19 A. Yes.

20 Q. Okay. I show you an exhibit previously marked --

21 THE COURT: With that, Counsel, as we're moving  
22 to another exhibit, why don't we end for the day?

23 Members of the jury, we're adjourning for the  
24 evening. We'll see you tomorrow morning at 9:00. As  
25 always don't talk to anybody about the case. Thank you.

1 THE CLERK: All rise for the jury.

2 4:58 p.m.

3 **IN OPEN COURT**

4 **(JURY NOT PRESENT)**

5 THE COURT: All right. We're going to take a  
6 brief break to give the court reporter a break.

7 MR. HINDERAKER: May I make a comment, Your  
8 Honor?

9 THE COURT: Yeah.

10 MR. HINDERAKER: During the last break we got  
11 placed on our table about 40 pages of two memoranda, and  
12 so --

13 THE COURT: And you are not ready to read and  
14 respond to that and file something?

15 MR. HINDERAKER: Not in the next 15 minutes.

16 THE COURT: Okay.

17 MR. HINDERAKER: We have some -- I've had a  
18 chance to read it during in and out of the Sawyer testimony  
19 to some extent. I know we have some very different views  
20 of what the real law is. And --

21 THE COURT: You can sit down, if you want, guys.  
22 You can stay or you can sit.

23 MR. HINDERAKER: I'm happy -- what I am  
24 requesting is that we have an opportunity to respond in  
25 writing and that we have the weekend to do that, and we'll

1 file it Monday morning, Sunday night.

2 THE COURT: Yeah. Well, we'll take this back up  
3 in ten minutes, but, yes, I mean, that's going to happen is  
4 the short answer.

5 I have a funny feeling I know what's in some of  
6 that 40 pages, and we can talk about that for a little bit,  
7 but let's take a break for 15 so that my court reporter  
8 can, you can, stick her hands in a barrel of ice or  
9 whatever.

10 (Recess taken)

11 5:14 p.m.

12 **IN OPEN COURT**

13 **(JURY NOT PRESENT)**

14 THE COURT: So, Ms. Godesky, here's what I'd  
15 suggest we do.

16 I would like to hear from you. Just summarize  
17 the bases and the scope of your motion, and then I'll hear  
18 from FICO. I think in the circumstances, I'm going to give  
19 them an opportunity to respond, and I'm not going to rule  
20 until before, perhaps at the end of the presentation of the  
21 evidence.

22 But come on up and tell me what's going on.

23 MS. GODESKY: Mr. Metlitsky is going to handle  
24 this.

25 THE COURT: Okay. Let me guess. You want to



1 talk about client.

2 MR. METLITSKY: That would be number one, yeah.

3 THE COURT: Okay.

4 MR. METLITSKY: So there are three issues.

5 THE COURT: Okay.

6 MR. METLITSKY: That we're moving on two of them  
7 under Rule 50(a) for judgment as a matter of law and one of  
8 them under Rule 52(c), which applies to issues that you  
9 decide or an advisee jury decides.

10 THE COURT: Okay.

11 MR. METLITSKY: So the first one is client and  
12 its affiliates. You know the dispute, Your Honor, and  
13 we're seeking a judgment that "client" means Federal and  
14 the consequence of which that it's not a breach of contract  
15 for Federal's foreign affiliates to use Blaze Advisor.

16 THE COURT: And on that one, I'll just be really  
17 up front with you all. I am strongly considering that  
18 issue. If I do, if I were to agree with Federal on that,  
19 that would dispose of only the question of whether there  
20 was a breach by virtue of the use Chubb Canada, Chubb UK.

21 MR. METLITSKY: Right.

22 THE COURT: Chubb Australia. Beyond that, it  
23 doesn't, correct?

24 MR. METLITSKY: Correct.

25 THE COURT: Okay.

1 MR. METLITSKY: The second issue would dispose of  
2 all of 3.1. The second issue, our argument is that we're  
3 entitled to a judgment that FICO's termination on the  
4 ground that the third-party consultants used the software,  
5 was improper because it was immaterial as a matter of law.

6 And Judge Wright held that that breach had to be  
7 material for the termination to be valid.

8 THE COURT: Not only that, it's in the contract.

9 MR. METLITSKY: Indeed.

10 So, you know, I can elaborate. We filed a brief.  
11 So, and just tell me if you want me to keep going, but  
12 that's the second argument, and that would dispose, I  
13 think, of 3.1.

14 THE COURT: Okay.

15 MR. METLITSKY: In total.

16 THE COURT: That would take care of 3.1 in total.  
17 Okay.

18 And then the issue about the advisory jury on  
19 disgorgement.

20 MR. METLITSKY: Right. Our argument is that FICO  
21 has failed to satisfy its burden of showing revenue that's  
22 attributable to the infringing use or that -- that the  
23 infringing use contributed to revenue based on a total  
24 failure of proof to connect the revenue with the infringing  
25 use, as you heard from Mr. Whitener yesterday.

1           THE COURT: Okay. And I'm assuming that you have  
2           in your mind -- I'm not being flippant. To your side you  
3           have connected these arguments to the specific testimony  
4           that you are relying on.

5           MR. METLITSKY: Oh, yes. Yes. And we also  
6           pointed out the differences between the summary judgment  
7           record and the trial record on all these issues.

8           THE COURT: I was going to ask you -- none of  
9           this is argument. I'm not deciding anything today. But I  
10          don't mind getting some guidance based on what's already  
11          been done. I was going to ask you that very question about  
12          client and its affiliates.

13          MR. METLITSKY: Yeah.

14          THE COURT: When we argued this in the guise of a  
15          motion in limine, you had suggested that, well,  
16          Judge Wright didn't go there simply because Federal didn't  
17          move, but, of course, Rule 56 allows her to go there  
18          anyway.

19          So the question would be really what's the state  
20          of the record and the difference, and do you address that  
21          in your memoranda?

22          MR. METLITSKY: Yes, and I could just quickly  
23          tell you. First of all, the rule allows the court to grant  
24          summary judgment to the nonmoving party, but I don't think  
25          it requires the court to do so. And the court expressly

1       said that it wasn't granting summary judgment because it  
2       believed we didn't move.

3               But there is a difference between the summary  
4       judgment and the trial record. You will remember that  
5       paragraph, which is a little bit hard to decipher because  
6       the beginning talks about the meaninglessness of the term  
7       "and its affiliates," right?

8               But then it goes on to say that there might be a  
9       fact dispute about whether Chubb & Son had employees and  
10      whether it had affiliates. That second fact dispute is  
11      gone. It's stipulated away. And I think their witnesses  
12      admitted that Chubb & Son has no affiliates.

13              And so now you know that the second amendment and  
14      in particular adding "and its affiliates" to "client" would  
15      be a complete null set. It would be meaningless. It would  
16      be a million dollars for nothing essentially, you know, if  
17      client --

18              THE COURT: A million dollar license you can't  
19      use.

20              MR. METLITSKY: Yeah. Right. And in particular  
21      you can't use through your affiliates even though you added  
22      the words "and its affiliates" is what you were paying for.  
23      So that is the difference between the record now and the  
24      summary judgment record, and it seems like a big  
25      difference.

1           Of course, we think the issue is already decided  
2           based on the first ground that Judge Wright discussed,  
3           which is that Chubb & Son isn't a legal entity and it can't  
4           contract anyway, but even if you set that aside, the  
5           reading of the contract isn't plausible once it's admitted  
6           which is it is, that Chubb & Son has no affiliates and  
7           couldn't have affiliates.

8           THE COURT: Okay. Thank you. I don't need or  
9           want anything further.

10          MR. METLITSKY: Okay.

11          THE COURT: But thank you.

12          MR. METLITSKY: Can I just add one thing?

13          THE COURT: You just said that. Go ahead.

14          MR. METLITSKY: This isn't on the merits. This  
15          is on the timing. So we think we will probably be done  
16          Tuesday or Wednesday, which means we have to have a charge  
17          conference before then, which means you have to have a  
18          charge before then.

19                 So we would just request that whenever this  
20          argument is going to be, you know, it's, I think it should  
21          be in advance of that.

22          THE COURT: Right. So, yes, we spent several  
23          hours here last night working on verdict form and  
24          instructions because we can see the train coming down the  
25          track. Certainly, we would have to, we would have to have

1 a ruling on these issues obviously before the charge  
2 conference.

3 Is your best estimate that you will be done on  
4 Tuesday or Wednesday and who do you have left? Just give  
5 me the list.

6 MS. GODESKY: So tomorrow we're calling three  
7 witnesses. Well, we'll have to continue Mr. Sawyer's  
8 video, and then we have three live witnesses, Ellen Garnes  
9 and two experts. So our directs are fairly targeted, but,  
10 you know, if they're crossing two experts, that could bleed  
11 into Monday.

12 And then we have at least five more witnesses and  
13 one video, I believe, and that comes with the caveat that  
14 we're tinkering.

15 THE COURT: Sure.

16 MS. GODESKY: But I think end of day Tuesday is a  
17 fair estimate, but it could bleed into Wednesday.

18 THE COURT: It would be aggressive, or not  
19 aggressive, but certainly optimistic. And will one of your  
20 expert witnesses be Kursh.

21 MS. GODESKY: No. The parties have reached an  
22 agreement that we are not calling Kursh, and they are not  
23 calling their own rebuttal expert.

24 THE COURT: Okay.

25 MS. GODESKY: Yes.

1 THE COURT: Okay. So just so everybody's on the  
2 same page. Assuming that we get this done, testimony, at  
3 least speaking, by Tuesday, sometime 3:00 or later -- well,  
4 realistically noon or later, then closing arguments will be  
5 Wednesday morning.

6 And -- but if we bleed over into testimony a  
7 little bit on Wednesday, we will have had the charge  
8 conference on Tuesday anyway, I think, and we'll go with,  
9 we'll get to final arguments likely Wednesday afternoon.

10 MS. GODESKY: Okay. Understood. Thank you for  
11 that.

12 THE COURT: Okay. Thank you.

13 Mr. Hinderaker, come on up. Like I say, you  
14 don't need to argue anything at this point. Nothing is  
15 decided. And you get the time that you -- I'll give you as  
16 much time as I can.

17 MR. HINDERAKER: Sure.

18 THE COURT: Let me just on my side of it, I think  
19 the serious issue, the most serious issue is this question  
20 about "client." And, you know, looking at it from the  
21 perspective of, if I, if FICO's interpretation of Chubb &  
22 Son, a division of Federal, is valid, how would that not  
23 render the contract just basically illusory? So, I mean  
24 that's my concern.

25 MR. HINDERAKER: Of course.

1 Well, we'll bring forth the law and actually some  
2 nice New York law.

3 THE COURT: Okay.

4 MR. HINDERAKER: That an unincorporated division  
5 is indeed capable of contracting and bound by contracts,  
6 and --

7 THE COURT: Again the bigger -- my problem is  
8 less that one than it is this issue of if they have no, if  
9 they have employees, fundamental to the license is, they  
10 can't let anybody but their employees use it, so they've  
11 now purchased a license through three amendments or  
12 through three iterations that nobody can use.

13 MR. HINDERAKER: Yeah. I think that's not quite  
14 the way to think about it. Okay?

15 So what, what New York law, now I know New York  
16 law, is that the division, unincorporated, is capable of  
17 contracting and being bound by, and being bound by the  
18 agreement.

19 The fact that the division inside of the entity  
20 Federal has a consequence of a paycheck coming to the  
21 division members from Federal doesn't change the scope of  
22 the license agreement to Chubb & Son.

23 Federal, of course, is the defendant because as  
24 the legal entity you need a legal entity to sue, but in  
25 terms of the performance of the contract, Chubb & Son --



1 I'm sorry -- Federal has chosen to organize itself into a  
2 division. Very large, which division contracts with other  
3 insurance companies and contracts with vendors.

4 These are not illusory contracts, they are not  
5 fraud, and is bound to them. The fact that the -- Federal  
6 is the employer doesn't change what the contract itself is.  
7 So as the manager and servicer, as we've seen, these many,  
8 many, hundred thousand -- I mean not a hundred thousand, I  
9 mean hundreds or a thousand employees that are organized  
10 around Chubb & Son, they provide these services to the  
11 other insurance companies without employees.

12 That's the scope of this license agreement. Now,  
13 there's a, you know, one of the cases in New York is, says  
14 this: The unincorporated division or unincorporated  
15 entity, the nonlegal entity, is the contracting party. If  
16 that party breaches, the entity will be a defendant.

17 But the plaintiff's remedy, the scope of the  
18 plaintiff's remedy is limited to the assets of the  
19 unincorporated thing that it contracted with. The two  
20 parties are indeed bound by the agreement that they made.

21 So I think there's a bit of smoke in the sense  
22 that, there's a bit of smoke regarding Federal being  
23 responsible for Chubb & Son and the fact that they chose to  
24 enter into a contract with FICO in this way, and they are  
25 bound to it.

1 THE COURT: So let me put my concern a different  
2 way. FICO has never contended, at least as I understand it  
3 in this trial, that the use of Blaze Advisor by Federal  
4 employees breached the contract.

5 MR. HINDERAKER: No, we haven't, because --

6 THE COURT: How can they maintain that and yet  
7 say that the scope of the license is defined by Chubb &  
8 Son, a division of Federal, and the license can't be used  
9 by people other than the client's employees, then?

10 MR. HINDERAKER: In our law firm, we have a  
11 litigation department. The paycheck comes from Merchant &  
12 Gould. Everybody in the litigation department knows that  
13 we -- that that's the organization in which we are a part.  
14 When we sign license agreements for certain products that  
15 we decide in the litigation department, we are signing it  
16 as in the litigation department, not as Merchant & Gould.

17 It's a way that they chose to organize  
18 themselves, and we recognize that they are within, they are  
19 within Federal, and we recognize that they are within  
20 Federal. And we haven't said that a Federal employee can't  
21 use a software if that person is in the Chubb & Son  
22 division of, in the Chubb & Son division, that group.

23 Now, in the testimony of Mr. Taylor, you know, I  
24 said, are there any Federal employees outside of the  
25 United States? And he said no. And the reason I did that

1 is because obviously that means there's no, there's no  
2 Chubb & Son division people outside the United States  
3 either.

4 So that's why the use by the foreign affiliates  
5 is outside of the scope of the license, because those are  
6 not Chubb & Son employees.

7 I might say that the notion that was, that we  
8 just heard, that FICO has at some point said, has at any  
9 point said the foreign insurance companies are not  
10 affiliates is not right. We've always said that they were  
11 affiliates. They're just not -- just that the client  
12 doesn't have affiliates.

13 Does that make that the client and its affiliates  
14 inoperable? Yes, it does. Does it make Amendment Two  
15 meaningless? No, it doesn't because Chubb & Son that was  
16 providing all of the services for the dozen other insurance  
17 companies to use Blaze Advisor for selling insurance now  
18 could use it not just for the specialty insurance, but they  
19 could use it for commercial insurance, or if any of the  
20 companies that they managed wanted to sell personal  
21 insurance, the scope of the applications of the product  
22 types, the insurance types, was no longer limited.

23 So that's the expansion of scope to the  
24 enterprise of what Chubb & Son does. That's why we spent  
25 so much time just identifying, well, what is Chubb & Son?

1 Well, it's the management. That's why we put in the  
2 contracts of their management.

3 We'll think about it more along with you, but the  
4 notion that Chubb & Son enters into contracts and says it  
5 will do stuff, but then it's illusory because paychecks are  
6 coming from Federal doesn't make sense to me either.

7 THE COURT: Okay. Understood.

8 MR. HINDERAKER: And my only other comment as you  
9 want to think about this and you are looking at it, that  
10 first sentence of 9.2c does not require materiality. The  
11 first sentence speaks to breach of the license restriction.

12 We'll put the law in the memorandum that parties  
13 are quite free to contract around the common law rule of  
14 materiality. And in that first sentence we did. Yeah, the  
15 stuff we can address in the briefs.

16 THE COURT: Okay. So let's talk about timing of  
17 that.

18 When can you -- can you be fully briefed by  
19 Sunday at 6:00 p.m. or -- or tell me. And the difference  
20 being from my perspective, are we going to argue this  
21 Monday night? Are we going to argue it Tuesday before  
22 whatever charging conference is done?

23 MR. HINDERAKER: Well, I'd like to have until,  
24 I'd like to have as much time as we can, given the timing  
25 to us in terms of doing it.

1 THE COURT: Okay.

2 MR. HINDERAKER: So deeper into Sunday would be  
3 nice.

4 THE COURT: Okay. Well, that's fine.

5 Then why don't you file by midnight -- I can  
6 never remember. If midnight is Monday morning, then, then.  
7 If midnight is Sunday night, then, then. But midnight, the  
8 hour between very late Sunday night and Monday morning.

9 And we'll plan on arguing then at the end of the  
10 day on Monday.

11 And, certainly, if I don't rule on Monday, I will  
12 rule Tuesday morning before we start taking testimony.  
13 Okay?

14 MR. HINDERAKER: Would it be -- not if it's  
15 improper, but we've been fairly openly with the sequence of  
16 our witnesses. I hear there's five more. I hear there's  
17 five more witnesses. Could you disclose who they are?

18 MS. GODESKY: We will be presenting, after the  
19 next three tomorrow, Ms. Theberge, Mr. Schraer, Mr. Folz.  
20 We have the Clark video. And that's what we're certain  
21 about right now. So we can, we can get back to you with  
22 more detail this weekend.

23 MR. HINDERAKER: Thank you.

24 MS. GODESKY: Mm-hmm.

25 THE COURT: Okay. Anything else we should be

1 addressing this evening?

2 MS. GODESKY: Not from me. And I'll just add the  
3 caveat, that was not necessarily in order.

4 MR. HINDERAKER: No. But it at least narrow us  
5 down to candidates.

6 THE COURT: Anything further for FICO?

7 MR. HINDERAKER: No, Your Honor.

8 THE COURT: Okay. We're in recess. Thank you.

9 (Court adjourned at 5:36 p.m., 03-02-2023.)

10 \* \* \*

11 We, Kristine Mousseau and Renee A. Rogge, certify  
12 that the foregoing is a correct transcript from the record  
13 of proceedings in the above-entitled matter.

14  
15 Certified by: /s/Kristine Mousseau  
Kristine Mousseau, CRR-RPR  
16 /s/Renee A. Rogge  
Renee A. Rogge, RMR-CRR  
17  
18  
19  
20  
21  
22  
23  
24  
25